STATE OF ALABAMA DEPARTMENT OF REVENUE,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
v.	§	DOCKET NO. INC. 86-234
LEWEY S. & GAYLE W. HORN 505 North Shiloh Street Linden, AL 36748,	§	
Taxpayer.	§	

ORDER

This case involves two preliminary assessments of income tax entered by the Department against Lewey S. and Gayle W. Horn ("Taxpayers") for the calendar years 1983 and 1984. A hearing was conducted in the matter on June 10, 1987, with Mr. Lewey S. Horn representing the Taxpayers and assistant counsel Mark Griffin representing the Department. Based on the evidence submitted and testimony taken, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

On their 1983 and 1984 joint Alabama income tax returns, the Taxpayers, a married couple residing in Linden, Alabama, claimed various traveling, meal and entertainment deductions relating to the husband's duties with the Alabama National Guard. While a number of the claimed deductions, including dues, uniforms, etc., were allowed by the Department, the following were disputed and are the basis for the assessments in issue.

(1) The husband attended National Guard drills in Birmingham and on occasion visited and stayed overnight with relatives in the

area. The Taxpayers claimed all mileage traveled by the husband, including that mileage relating to the visits to the relatives. The Department allowed only the direct mileage necessary to travel between Birmingham and Linden.

(2) The Taxpayers deducted for meals and entertainment relating to both the husband and the various relatives. The husband kept an expense log, but did not keep individual records, i.e. receipts, billings, etc. in verification of each expense. Concerning the meals and entertainment for the relatives, the husband claimed that they were in reimbursement for his overnight stays and should therefore be allowed. The Department allowed deductions relating to the husband of $14.00 per day. The remainder were disallowed.

(3) Expenses relating to the husband's one-day trips from Linden to Montgomery and back for flight training were disallowed. The Department's position is that the expenses relating to such trips were not deductible because the Taxpayer failed to stay overnight.

(4) Expenses relating to the husband's trips to National Guard summer camp in Florida each year were initially disallowed. However, such expenses were subsequently allowed in full except for travel mileage between the summer camp location and the Taxpayer's choice of barracks approximately 50-60 miles away. The Taxpayer could have lived at or near the summer camp location, but chose to reside at the more comfortable and more distant

accommodations away from the camp. The Department argues that the expenses relating to the additional mileage made necessary by the Taxpayer's selection of living quarters is personal in nature and therefore not deductible.

(5) Deductions relating to the husband's expenses in the operation of a restaurant were initially disallowed, but upon re-examination were permitted.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-18-15(a)(1) and related Regs. 810-3-15-.02 and 810-3-15-.10 allow a deduction for all ordinary and necessary business expenses. That section is modeled after federal law, and thus, federal case law construing the federal statute should control. Best v. State, Department of Revenue, 417 So.2d 197.

Whether certain expenditures are deductible depends entirely on the particular facts of the situation, Commissioner v. Heininger, 320 U.S. 467, and what constitutes ordinary and necessary expenses must also be guided by the same rule. However, it is clear that expenditures made at the convenience of the taxpayer and not in furtherance of a valid business purpose are not allowable. C.I.R. v. Flowers, 326 U.S. 465. Only those expenses directly and reasonable related to the husband's business pursuits are properly deductible. C.I.R. v. Flowers, supra; Carragan v. Comm., 197 F.2d 246.

Concerning category (1), the Department was correct in allowing only the mileage necessary for the husband to travel to and return from drills in Birmingham. The additional mileage traveled to visit relatives was not directly related to the husband's duties with the National Guard and must be considered personal in nature.

All taxpayers have the burden of substantiating a claimed deduction, and their failure to do so will result in rejection of the amount claimed. Welch v. Helvering, 290 U.S. 111; Factor v. U.S., 281 F.2d 100; U.S. v. Woodall, 255 F.2d 370. In the present case, the husband kept a general diary, but did not maintain receipts or other records to verify the entries. However, relating to meals, travel, entertainment, etc., I.R.S. Reg. §1.274-5 provides that specific documentary evidence is not necessary to verify a log or diary entry if the amount involved is less than $25.00. Consequently, the Department should allow up to $25.00, as opposed to the $14.00 initially allowed by the Department, on all unverified meal and entertainment expenses claimed by and relating to the husband.

As to those expenses for meals and entertainment relating to the husband's relatives, such expenses are clearly not business related and are not deductible.

Concerning the husband's one-day trips to Montgomery for flight training, the federal courts have adopted the "sleep or

rest" rule, which provides that for travel expenses to be deductible, the trip involved must be of such a nature that sleep and rest would be reasonably required at some point during the trip. U.S. v.Correll, 389 U.S. 299; Williams v. Patterson, 286 F.2d 333; C.I.R. v. Flowers, supra. Consequently, the Department properly disallowed the deductions relating to the husband's one day trips to Montgomery.

Finally, the expenses of traveling between summer camp and the overnight barracks selected by the husband some 60 miles away were non-deductible, personal expenses. To be deductible, a trip must be judge by business demands, and not by the taxpayer's personal convenience. Commissioner v. Flowers, 326 U.S. 465; Carragan v. Commissioner, supra; Barnhill v. Commissioner, 148 F.2d 917. The Taxpayer could have stayed at or near the summer camp location, but instead, chose not to do so for personal convenience. Any expenses relating to that choice are not deductible.

The above considered, the assessments in issue should be recomputed to reflect the increase in the maximum allowed for unverified deductions from $14.00, as computed by the Department, up to $25.00, as should be allowed. The assessments should then be made final as adjusted, with applicable interest as required by statute.

Done this the 30th day of July, 1987.

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BILL THOMPSON
Chief Administrative Law Judge