

STATE OF ALABAMA  
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. INC. 86-271

JACK B. & NELL J. HUNTER  
Route 1 Box 1175  
Sumiton, AL 35148,

§

§

Taxpayers.

§

ORDER

This matter involves a preliminary assessment of income tax entered by the Revenue Department (Department) against Jack B. and Nell J. Hunter (Taxpayers) for the calendar year 1983. A hearing was conducted in the matter on August 18, 1987. The Taxpayers were present and represented themselves. Revenue Department assistant counsel Nancy I. Cottle appeared on behalf of the Department. Based on the evidence submitted in the case, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The Internal Revenue Service (IRS) made adjustments to the Taxpayers' 1983 federal return, and in accordance with federal/state exchange agreements submitted their revenue agent's report (R.A.R.) to the Department for examination. Based on said federal adjustments, the Department (1) disallowed unreimbursed business expenses for meals and lodging in the amount of \$3,596.00, (2) included as income \$1,150.00 in wages received from K-Mart, and (3) denied a claimed dependent deduction of \$300.00 relating to the Taxpayers' grandson.

At the administrative hearing, the husband testified that while he had traveled extensively during 1983 as a roofer, he did not keep any receipts or other records of his expenses relating thereto. The wife also conceded that she had worked from K-Mart for approximately six to eight months in late 1982 and possibly 1983. However, concerning the claimed dependent exemption for their grandson, both Taxpayers testified that they had during the period in dispute and do presently provide financial support for the child.

#### CONCLUSIONS OF LAW

Code of Ala. 1975, §40-1-5(c) requires that all taxpayers must keep adequate records sufficient to verify their tax liability as reported to the Department. Accordingly, a taxpayer claiming a deduction has the burden of documenting that the deduction is indeed appropriate. Brundidge Milling Co. v. State, 228 So.2d 475.

In the present case, the Taxpayers admitted that they kept no records to verify meals and lodging expenses incurred in conjunction with the husband's employment as a roofer. While in some instances an estimate of expenses is allowable, Cohan v. Commissioner, 39 F.2d 540, such estimation is appropriate only if the deductible event, i.e. travel and meals relating to work, is established and the only uncertainty concerns the amount to be allowed.

In the instant case, the Taxpayers not only failed to verify

the amount of the claimed meal and lodging expenses, but also failed to establish by date and location whether such expenses had in fact been incurred. The Taxpayers' verbal assertions, without documentation, are insufficient. State v. Levey, 29 So.2d 129.

The federal information provided to the Department also indicated that the wife had received wages from K-Mart in 1983. The wife did not directly dispute the R.A.R. findings, and in fact admitted that she may have worked at K-Mart for a short period in 1983. Consequently, the additional wages included by the federal government should be upheld.

Code of Ala. 1975, §40-18-19(a)(7) provides a \$300.00 exemption for each person, i.e. dependent, who during the subject tax year received over one-half of his or her support from the claiming taxpayer. The Taxpayers in the present case claimed their grandson as a dependent on both their federal and Alabama returns in 1983. However, the IRS rejected the exemption because the Taxpayers failed to fill out various forms verifying that they had in fact provided over one-half of the child's support in the subject year.

At the administrative hearing, both Taxpayers testified that the child, now eight years old, has lived with and been exclusively supported by them since infancy. The Taxpayers further presented school records and a letter from their daughter, the child's mother, which supported their contention that they had provided all

of the child's support during 1983. Based thereon, the Taxpayers should be allowed a dependency exemption relating to the child for the subject year.

The above considered, the Revenue Department is hereby directed to adjust the final assessment so as to allow for the dependent exemption. All other adjustments made by the Department should be upheld. Said assessment should then be made final as adjusted, with applicable interest as required by statute.

Done this 26th day of August, 1987.

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BILL THOMPSON  
Chief Administrative Law Judge