

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

v.

§

DOCKET NO. INC. 87-149

MICHAEL C. SHIN
5340 Franklin Avenue, North 203
Los Angeles, CA 90027,

§
§

Taxpayer.

§

ORDER

The Department entered preliminary assessments of income tax against Michael C. Shin ("Taxpayer") for the years 1983, 1984 and 1985. The Taxpayer appealed to the Administrative Law Division and a hearing was scheduled for may 25, 1988. The Taxpayer was duly notified of the hearing, but failed to appear. The hearing proceeded, with assistant counsel Sam Clenney representing the Department. Based on the evidence submitted at the bearing, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The Department audited the Taxpayer and entered preliminary assessments of income tax for each of the years 1983, 1984 and 1985. The Taxpayer conceded and paid the assessments for 1983 and 1984 prior to the May 25th hearing. Thus, only the 1985 assessment remains in dispute.

The Department adjusted the Taxpayer's 1985 liability as follows: The Department disallowed a claimed business loss in the amount of \$161,718.00. The Department also disallowed a deduction

for legal fees and two dependent deductions, both for lack of substantiation. Finally, FICA and interest expense deductions were increased.

The Taxpayer claimed a loss on his 1985 Alabama return (federal form 4797) based on the sale of restaurant equipment and fixtures. The assets were acquired by the Taxpayer on February 15, 1980 with a basis of \$190,798.00, and were sold on June 30, 1982 for a gross sales price of \$11,200.00. The basis was reduced by \$17,880.00 for prior year depreciation, resulting in a net loss of \$161,718.00.

The purchaser subsequently defaulted and the equipment and fixtures were repossessed in October, 1983 and sold on consignment in early 1984. Based thereon, the Taxpayer contends that the sale was not closed in June, 1982 and consequently that the loss should be allowed for the years 1983, 1984 and/or 1985. However, the loss was not claimed on the Taxpayer's returns in either 1982, 1983 or 1984. Further, the Department was not provided any records from which the claimed cost basis of the subject property could be verified.

The Department also requested information by which the claimed dependent and legal fee deductions could be verified. The Taxpayer failed to produce records and as a result, those deductions were disallowed. No additional records have been provided by the Taxpayer.

CONCLUSIONS OF LAW

A taxpayer is required to provide sufficient records in support

of a claimed deduction. U. S. v. Wodtke, 627 F. Supp. 1034. The Taxpayer in the present case failed to provide either the examiner or the Administrative Law Division with verifying documentation concerning the claimed dependent and attorney fee deductions. Consequently, those deductions were properly disallowed by the Department.

A loss on the sale of business assets must be recognized in the year the transaction is closed, see Code of Ala. 1975, §§40-18-7 and 40-18-8 and related Alabama Reg. 810-3-15-.07 and federal statutes 26 U.S.C. §§1001 and 1002 and related Treas. Reg. §1.165-1(d)(1). The Taxpayer concedes that the sale which generated the alleged loss occurred on June 30, 1982. Consequently, any loss resulting from that sale should have been claimed in 1982. Because it was not, no subsequent loss can be claimed in 1985.

In any case, again the Taxpayer failed to provide sufficient records from which the basis of the subject property could be established. A taxpayer is required to provide proof of a cost basis in property, and a zero basis must be allowed in the absence of such proof. G. M. Leasing Corp. v. U.S., 514 F.2d 935; Factor v. C.I.R., 281 F.2d 100. Thus, the loss should be denied even if it had been sustained in 1985.

The above considered, the Department is hereby directed to make final the assessments as entered, with appropriate interest as required by statute.

Done this 27th day of May, 1988.

BILL THOMPSON

Chief Administrative Law Judge