

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. INC. 87-150

ROBERT B. & LOIS A. DUNCAN
2809 Madison Street
Adamsville, AL 35005,

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§

Taxpayer.

§

ORDER

The Department entered preliminary assessments of income tax against Robert B. and Lois A. Duncan ("Taxpayers") for the calendar years 1983 and 1984. The Taxpayers appealed to the Administrative Law Division and a hearing was conducted on May 26, 1988. Mr. Robert B. Duncan ("Taxpayer") was present and represented the Taxpayers. Assistant counsel Mark Griffin appeared for the Department. Based on the evidence presented in the case, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The Taxpayer was employed during the years in question as a minister at the Church of Christ in Adamsville, Alabama.

In 1983, the Taxpayer reported his wages as a minister on Schedule C "Profit or (Loss) from Business or Profession". The Taxpayer claimed related Schedule C expenses for automobile use, depreciation, insurance, interest, contributions to his church (listed as "returns and allowances" on part 1, line 1b of Schedule C), and other miscellaneous deductions. The Taxpayer also filed a

Schedule E "Supplemental Income Schedule" and thereon claimed repairs of \$11,419.00. Finally, the Taxpayer elected the optional standard deduction in lieu of itemizing deductions on Schedule A.

In 1984, the Taxpayer again reported his wages as a minister on Schedule C and claimed the same Schedule c expenses, i.e., insurance, interest, contributions, etc., as in 1983. Again the Taxpayer opted for the standard optional deduction in lieu of itemizing on Schedule A.

The Department audited the Taxpayers and entered the following adjustments:

For both 1983 and 1984, the Department disallowed the Schedule C expenses for insurance, interest and contributions. The Department's position is that those expenses were personal in nature and should have been claimed, if at all, as itemized deductions on Schedule A. The Department further contends that the Taxpayers' election of the optional standard deduction in both years is final and cannot now be altered to allow for itemized deductions. The Department also disallowed the 1983 Schedule E repair deduction of \$11,419.00, but a corresponding amount was allowed as a housing allowance.

The Department reviewed its adjustments after entry of the preliminary assessments in question and allowed an additional housing allowance in 1983 of \$2,981.00 (\$14,400.00 total) and also a full allowance of \$14,400.00 in 1984. As a result, the assessments were reduced to \$239.94 in 1983 and \$345.38 in 1984.

The only issue in dispute is whether the Taxpayer's contributions to his church should be allowed as an ordinary and necessary business expense on Schedule C, as opposed to an itemized deduction on Schedule A. The Taxpayer contends that as a minister his contributions are ordinary and necessary because he is expected to set an example with weekly contributions. The Department argues that the contributions do not qualify as business expenses and should have been claimed as a charitable contribution on Schedule A. The Department further argues that because the Taxpayers chose the standard deduction, a Schedule A charitable contribution deduction cannot now be allowed.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-18-15(a)(1) provides a deduction for all ordinary and necessary business expenses paid or incurred during the tax year. The above section is modeled after 26 U.S.C. §162.

Consequently, federal case law and other authority should be followed in interpreting the similar Alabama statute. Best v. State, Department of Revenue, 417 So.2d 197; State v. Gulf Oil Corp., 256 So.2d 172.

To be deductible, a business expense must be both ordinary and necessary. Welch v. Helvering, 290 U.S. 111. Each case must be judged from its own particular facts, with attention to the type of business and circumstances involved. Commissioner v. Heininger, 320 U.S. 467. However, a taxpayer has the burden of establishing that the expenditure represents a legitimate business expense. Alsobrook

v. U.S., 431 F.Supp. 1122; Great Lakes Pipeline Company v. U.S., 352 F.Supp. 1159. The taxpayer must show that the expenditure was primarily motivated by a business purpose, and was not personal in nature. M.S.D., Inc. v. U.S., 434 F.Supp. 85; Vesuvius Crucible Company v. C.I.R., 24 T.C.M. 750, affirmed 357 F.2d 948.

In the present case, the Taxpayer voluntarily contributed \$80.00 per week to his church. According to the Taxpayer, regular contributions were expected as an example to the church members. That is, weekly contributions were implicitly required as a condition for retaining his position as minister at the church.

But voluntary payments do not constitute legitimate business expenses. Union Fishermen's Cooperative Packing Company v. Earle, 121 F.Supp. 373; Friedman v. Delaney, 172 F.2d 269. Further, although contributions are expected from a minister, certainly they would not be primarily motivated by business considerations. As with the other church members, the Taxpayer's contributions were certainly made from personal conviction and for the purpose of supporting the church and its programs. That is, the Taxpayer would have contributed to the church regardless of any business benefits, either direct or indirect, derived therefrom. Consequently, the Taxpayer's contributions can only be claimed as charitable deductions on Schedule A.

However, because the Taxpayers elected the optional standard deduction in both years, the contributions cannot now be allowed as a Schedule A charitable deduction. A taxpayer must choose between

itemizing deductions or taking the standard deduction, and cannot change after the filing deadline has expired. State v. Kilborn, 340 So.2d 447.

The above considered, the Department is hereby directed to make final the assessments in issue as entered, with applicable statutory interest.

Done this 7th day of June, 1988.

BILL THOMPSON
Chief Administrative Law Judge