

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

v.

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DOCKET NO. INC. 87-172

ROGER F. & JUDY K. WOOTEN
Route 4, Box 626
Athens, AL 35611,

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Taxpayers.

§

ORDER

The Revenue Department assessed income tax against Roger F. and Judy K. Wooten ("Taxpayers") for the calendar year 1984. The Taxpayers appealed to the Administrative Law Division and a hearing was conducted on September 7, 1988. Mr. Roger F. Wooten appeared for the Taxpayers. Assistant counsel Duncan Crow represented the Department. Based on the evidence submitted by the parties, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The Revenue Department audited the Taxpayers for 1984 and entered the following adjustments:

(1) The Department disallowed daily travel expenses claimed by the Taxpayer. The Taxpayer was employed as an electrician with the Tennessee Valley Authority ("TVA") for at least the period 1980 through 1984. The Taxpayer was a member of a local labor union and worked as needed by the TVA at the Brown's Ferry Nuclear Power Plant under a standard "11-29" contract. That is, the contract term was for 11 months and 29 days. The duration

of each assignment varied from two weeks to the full contract period. A separate contract was signed for each job assignment.

The Taxpayer was off a total of approximately 10 months from 1980 through 1984.

During 1984, the Taxpayer worked until April 6, was off until July 30, was re-employed on July 30, was laid off again on September 5, and was finally rehired on November 4. The Taxpayer claimed his travel expenses to and from work on his 1984 Alabama income tax return. The Department disallowed the expenses as non-deductible commuting expenses.

The Taxpayers' residence burned in 1984 and the Taxpayers claimed a casualty loss on the destroyed household items. The Taxpayers' insurance company computed the value of the lost property as replacement cost less depreciation. The Taxpayers adopted the same value as allowed by the insurance company. However, the Department rejected the Taxpayers' computations and further depreciated the property to arrive at what the Department considered a more accurate value for the destroyed property.

(3) The Taxpayers received \$63,000.00 in insurance as reimbursement for the loss of their residence. The Taxpayers' basis in the property was \$41,500.00. Consequently, the Department included \$21,500.00 as taxable gain.

(4) Finally, the Department included \$187.46 in insurance proceeds as taxable income because the insurance company reported that amount as reimbursement for normal living expenses.

CONCLUSIONS OF LAW(1) Employee Travel Expenses

Code of Ala. 1975, §40-18-15(a)(1) is based on 26 U.S.C. §162 and allows a deduction for all ordinary and necessary expenses incurred in carrying on a trade or business. But no deduction can be allowed for personal living expenses, which includes commuting expenses to and from work. Fausner v. Comm., 413 U.S. 838, 93 S.Ct. 2820; Commissioner v. Flowers, 326 U.S. 465, 66 S.Ct. 250.

However, an exception to the rule applies if the employment is away from the taxpayer's normal tax base and is temporary in nature. As stated in Cockrell v. C.I.R., 321 F.2d 504:

Where it appears probable that a taxpayer's employment outside the area from his regular abode will be for a 'temporary' or 'short' period of time, then his travel expenses are held to be deductible; conversely, if the prospects are that his work will continue for an 'indefinite' or an 'intermediate' or 'substantially long' period, then the deduction is disallowed.

The burden is on the taxpayer to establish that he is entitled to a deduction for work-related travel expenses. U.S. v. Tauferner, 407 F.2d 243, cert. denied, 396 U.S. 824, 90 S.Ct. 66.

In the present case, there is no evidence to indicate that the jobs worked by the Taxpayer during 1984 were away from his normal tax home. Rather, the Taxpayer was steadily employed during the period at the Brown's Ferry Nuclear Plant. The periodic breaks in employment were not sufficient to make the Taxpayer's employment temporary in nature.

In similar circumstances, an employee's travel to various

construction jobs has been found to be nothing more than non-deductible commuting expenses. Comm. v. Purifoy, 254 F.2d 483; Kason v. U.S., 671 F.2d 1059. Consequently, as in the above cases, it must be found that the travel expenses in issue were in the nature of normal, non-deductible commuting expenses.

(2) The Casualty Loss Deduction

A casualty loss is measured by the difference between the fair market value of the property before the destructive event and the fair market value immediately following the event. Helvering v. Owens, 59 S.Ct. 260, 305 U.S. 468.

In the present case, the Taxpayers used the insurance companies' estimate of replacement cost less depreciation in valuing the lost property. Depreciation varied according to the age of each particular item.

The fair market value of used furniture can only be estimated. However, the valuation method selected by the Taxpayers is reasonable under the circumstances, especially considering that the same method was used for reimbursement purposes by the Taxpayers' insurance company. Replacement cost can be used in some instances to estimate current value if the property is properly depreciated.

(3) Taxable Gain on Insurance Proceed

The Taxpayers object that the Department should not have included \$21,500.00 in insurance proceeds as taxable income. However, the Taxpayers realized a gain on the difference between the amount received (\$63,000.00) and their basis in the property

(\$41,500.00), see Code of Ala. 1975, §40-18-7. Accordingly, the Department properly included the \$21,500.00 as taxable income in 1984.

(4) Reimbursement for Normal Living Expenses

Finally, the Department properly included the \$187.46 shown by the insurance company as paid for normal living expenses as taxable income.

Accordingly, the Department should recompute the Taxpayers' liability as directed above, and thereafter make the assessment final, with interest as required by statute.

Done this 26th day of September, 1988.

BILL THOMPSON
Chief Administrative Law Judge