

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. INC. 88-105

ROBERT I. & DIALLA RAY
Route 2, Box 966
Trinity, AL 35673,

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§

Taxpayer.

§

ORDER

The Revenue Department assessed income tax against Robert I. and Dialla Ray ("Taxpayers") for the year 1986. The Taxpayers appealed to the Administrative Law Division and a hearing was conducted on April 26, 1989. Carolyn Strickland appeared on behalf of the Taxpayers. Assistant counsel Mark Griffin represented the Department. Based on the evidence and arguments presented by the parties, the following findings of fact and conclusions of law are hereby entered.

FINDINGS OF FACT

The Taxpayers' residence burned in May, 1986. Based thereon, the Taxpayers claimed a casualty loss deduction of \$12,464.00 on their 1986 Alabama income tax return. The loss was computed as follows:

Cost basis of house	\$35,744.00
Less insurance reimbursement	<u>-31,500.00</u>
Loss on house	4,244.00
Cost basis of house contents	\$23,220.00
Less insurance reimbursement	<u>-15,000.00</u>
Loss on house contents	8,220.00
Total loss	<u>\$12,464.00</u>

The Taxpayers estimated the cost basis in the house and improvements. The basis in the contents was also estimated by the Taxpayers immediately after the fire for insurance purposes. However, no records were provided upon audit by the Department to verify either the purchase price of the house, the cost of improvements, or the value of the contents. Consequently, the examiner rejected the claimed basis in both the house and contents and thus denied the casualty loss.

The Taxpayers objected and requested a conference with the examiner's group leader. The group leader allowed a basis in the house of \$27,570.00 based on the purchase price of the house per information from the sellers, plus approximately \$6,000.00 in bank loans allegedly spent for capital improvements. The group leader also accepted the estimated contents value of \$23,220.00, for a total basis in house and furnishings of \$50,790.00. Total insurance proceeds of \$46,500.00 were subtracted to arrive at a loss of \$4,290.00. Clean-up costs of \$1,500.00 were allowed, for a total casualty loss deduction of \$5,790.00. The preliminary assessment in issue is computed based on the above adjustments.

The Taxpayers again objected and the adjustments were reviewed at an informal conference in Montgomery. A Department hearings officer reviewed the audit and adjustments and disallowed the estimated basis in the contents as previously allowed by the group leader. The Taxpayers subsequently appealed to the Administrative Law Division.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-18-15(6) provides a deduction for all "casualty losses" arising from fires, storms, shipwrecks, etc. The amount of a loss is the difference between the value of the property immediately before the destructive event and its value immediately afterwards, reduced by any reimbursements from insurance. A taxpayer is required to establish the existence and amount of a casualty loss., Westvaco v. U.S., 639 F.2d 700. Also, the taxpayer is obligated to prove the cost basis of property, and a zero basis must be allowed in the absence of adequate proof. G.M. Leasing Corp. v. U.S., 514 F.2d 935; Factor v. C.I.R., 281 F.2d 100.

The Taxpayers claimed a basis in the house of over \$35,000.00. However, the only figures that were verified were the purchase price of \$22,500.00 and loans of almost \$6,000.00. Even assuming that the loan proceeds were spent on capital improvements to the house, the total cost basis of \$28,500.00 is less than the \$31,500.00 reimbursement from insurance. Consequently, no loss should be allowed on the house.

The value of the contents was estimated by the Taxpayers immediately after the fire for insurance purposes. No verifying records were produced. The estimates were initially rejected by the examiner, then accepted by the examiner's group leader, then later rejected by the hearings officer in Montgomery.

Upon review, the values estimated for the contents, as accepted by the Taxpayers' insurance company and the Department group leader, are reasonable under the circumstances and should be allowed.

The preliminary assessment in issue was computed using the adjustments as entered by the group leader. The only disputed items disallowed by the group leader were capital improvements to the house for which the Taxpayers provided no records. The burden is on the Taxpayers to provide records, and the Department is not required to accept unsubstantiated verbal assertions. State v. Ludlum, 384 So.2d 1089. The Taxpayers should be reasonably required to provide records verifying major capital improvements, and the Department's refusal to accept the Taxpayers' claimed basis in the absence of such records is not unreasonable.

The above considered, the adjustments as entered by the group leader are reasonable and proper. Accordingly, the preliminary assessment should be made final as entered, with interest as required by statute.

Entered this the 6th day of July, 1989.

BILL THOMPSON
Chief Administrative Law Judge