

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. INC. 88-143

ROY M. LECKTRECK
P.O. Box 101
Montevallo, AL 35115,

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§

Taxpayer.

§

ORDER

The Revenue Department assessed income tax against Roy M. Lecktreck ("Taxpayer") for the calendar year 1984. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on September 13, 1988. The Taxpayer represented himself.

Assistant counsel Duncan Crow appeared on behalf of 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 claimed an interest deduction of \$4,677.00 on his 1984 Alabama income tax return. The interest was paid on money borrowed by the Taxpayer to purchase stock, and was claimed on Schedule D to reduce the Taxpayer's gain from the sale of stock.

The Department disallowed the interest as a Schedule D business deduction, arguing instead that the expense was personal in nature and thus should have been claimed as a Schedule A itemized deduction. However, the amount was also disallowed as an itemized deduction because the Taxpayer had opted for the standard deduction

in 1984.

The Taxpayer contends that he should not be penalized for claiming the interest on the wrong schedule. The Taxpayer further argues that the interest was not a personal expense, but rather was incurred as part of a business entered into for profit.

The Taxpayer is employed as an assistant professor at the University of Montevallo. During 1984, the Taxpayer was also interested in starting a second career as a financial advisor. Toward that end, the Taxpayer studied various financial publications and made various investments in the stock market. He hoped to use his stock market expertise to entice others to employ him as an advisor. However, his performance with the stock market was less than expected and he abandoned the idea of becoming an advisor.

CONCLUSIONS OF LAW

The Taxpayer contends that the interest in question was incurred in the ordinary course of business and should be allowed as an ordinary and necessary business expense. However, the interest was paid on loans used to purchase stocks in the Taxpayer's personal portfolio. Accordingly, the interest was personal in nature and thus could have been deducted only as an itemized deduction on Schedule A.

The fact that during 1984 the Taxpayer hoped to start a second career as an investment advisor did not alter the nature of his

personal investments. The Taxpayer by his own admission was hoping to do well personally in the stock market as an enticement for others to seek his advice. The fact that he spent considerable time studying the market and reading various business publications can be directly attributed to his personal profit motives, and only indirectly to some future career as a stock market analyst.

A taxpayer may elect to either itemize deductions or claim the optional standard deduction. The election cannot be altered after the time for filing the return has passed. State v. Kilborn, 340 So.2d 447.

In the present case, the interest was personal in nature and could only have been claimed as an itemized deduction on Schedule A. Having elected the optional deduction, the Taxpayer cannot now be allowed to deduct the interest as an itemized deduction. The Department properly disallowed the interest and the Taxpayer must suffer the consequences for selecting the optional standard deduction.

The above considered, the Department is hereby directed to make the assessment in issue final, with interest as required by statute.

Entered this 29th day of November, 1988.

BILL THOMPSON
Chief Administrative Law Judge