

STATE OF ALABAMA §  
DEPARTMENT OF REVENUE, §

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

v. §

DOCKET NO. INC. 88-215

GORDON W. & CHARLENE BECKETT §  
P.O. Box 67 §  
Faunsdale, AL 36738, §

Taxpayer. §

FINAL ORDER

The Revenue Department assessed income tax against Gordon W. and Charlene Kay Beckett (Taxpayers) for the years 1983 and 1984.

The Taxpayers appealed to the Administrative Law Division and a hearing was conducted on October 26, 1989. Gordon Beckett appeared for the Taxpayers. Assistant counsel Mark Griffin represented the Department. This Final order is entered based on the facts and arguments presented by both parties.

FINDINGS OF FACT

The Revenue Department denied various deductions claimed on the individual income tax return of Gordon W. Beckett for 1983 and the joint return of Gordon W. and Charlene Kay Beckett for 1984.

The following deductions are still disputed:

(1) The Taxpayers made an interest payment of \$19,370.94 which was received by the Federal Land Bank on January 25, 1985.

The Taxpayers claimed the payment as a deduction on their 1984 return because the payment was noted in their records as being made in December, 1984. The Department argues that the payment can be allowed only in the year that it was actually made, 1985.

(2) The Taxpayer lived at 730 Westmoreland Drive in Mobile, Alabama from 1978 until 1981. The Taxpayer moved to Indianapolis, Indiana in 1981 and converted the Westmoreland Drive house to rental property. The Taxpayer claimed an interest expense of \$5,332.00 relating to the property on his 1983 return, but failed to report any rental income. The Department adjusted the Taxpayer's return to include rental income of \$5,050.00. Both the Department and the Taxpayer now agree that the rental income should be included to offset the interest paid on the house mortgage.

(3) The Taxpayer sold the Westmoreland Drive rental house in 1983 and realized a gain of \$56,261.00. The Taxpayer argues that the gain should not be included as taxable income because it was reinvested in another primary residence shortly after the sale. The Department contends that the gain cannot be deferred because the property was converted to rental property in 1981 and the Taxpayer established another primary residence at that time.

#### CONCLUSIONS OF LAW

Interest may be deducted by an Alabama taxpayer, see Code of Ala. 1975, §40-18-15(a)(2). However, interest can be deducted by a cash basis taxpayer only in the year that payment is actually made, see U. S. v. Diehl, 460 F.Supp. 1282, affirmed 586 F.2d 1080; Wilkerson v. C.I.R., 655 F.2d 980. Consequently, the interest paid by the Taxpayer to the Federal Land Bank in January, 1985 could be deducted only in 1985, and not 1984.

Gain on the sale of a principal residence can be deferred if reinvested in another primary residence within two years of the sale, see Code of Ala. 1975, §40-18-14(2)h., Department Reg. 810-3-14-.07, and related federal statute 26 U.S.C.A §1034. However, if the taxpayer had abandoned the house as his primary residence prior to its sale, then the gain must be recognized, see Biltmore Homes, Inc. v. C.I.R., 288 F.2d 336; Stalk v. C.I.R., 40 T.C. 345, affirmed 326 F.2d 760.

In the present case, the Taxpayer moved out of the Westmoreland Drive house and converted it to rental property in January, 1981. The house was rented by the Taxpayer until sold in December 1983, almost three years later. In the meantime, the Taxpayer lived in a rented apartment in Indianapolis. From those facts, it must be decided that the Taxpayer had abandoned the Westmoreland Drive house as his principal residence in 1981, see specifically Biltmore Homes, Inc. v. C.I.R., supra. Consequently, the gain realized on the sale of the house in 1983 must be recognized, notwithstanding that the gain may have been reinvested in a subsequent principal residence by the Taxpayer within the required two year period.

The Department is hereby directed to make the assessments in issue final as directed above, plus applicable interest.

Entered this 16th day of April, 1990.

---

BILL THOMPSON  
Chief Administrative Law Judge