

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. 89-103

THOMAS L. & MARTHA ROUNTREE
P.O. Box 2071
Auburn, AL 36830,

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§

Taxpayer.

§

ORDER

The Revenue Department assessed income tax against Thomas L. & Martha Rountree (Taxpayers) for the years 1985 and 1986. The Taxpayers appealed to the Administrative Law Division and a hearing was conducted on July 6, 1989. Thomas L. Rountree, Esq. appeared for the Taxpayers. Assistant counsel Gwendolyn B. Garner represented the Department. The following findings of fact and conclusions of law are hereby entered based on the evidence and arguments presented by the parties.

FINDINGS OF FACT

The Revenue Department audited the Taxpayers and assessed income tax for the years 1985 and 1986. The 1985 assessment is undisputed. The Taxpayers also concede that a number of the Department's adjustments relating to the 1986 tax year are proper. The issue in dispute is whether certain disallowed business travel expenses claimed on the 1986 return should be allowed. The relevant facts are as follows:

Mr. Rountree (Taxpayer) is an attorney and practiced law in Oneonta, Alabama prior to and during 1985, where he resided with

his wife and family.

The Taxpayer accepted an offer in late 1985 to go into practice with an attorney in Auburn. The Taxpayer agreed to work out of the Auburn attorney's office for \$2,500.00 a month, plus 50% of any fees he generated over that amount. In March, 1986, the agreement was changed to \$4,000.00 a month, plus a split of the profits at the end of the year.

The Taxpayer closed his Oneonta office and began working in Auburn in December, 1985. However, the Taxpayer's family remained in Oneonta and the Taxpayer continued to handle several ongoing cases in the Oneonta area. Because of the distance between Auburn and Oneonta, the Taxpayer rented a trailer in Auburn, where he stayed on the average of two or three nights each week. The remaining time he resided in Oneonta. The rent and utilities for the trailer are the specific travel expenses in dispute.

The Taxpayer continued working in Auburn and living in the rented trailer until August, 1986, at which time he purchased a house in Auburn and moved his family from Oneonta. The Taxpayer continued to practice with the Auburn attorney until June, 1988, when he moved to another law firm in Opelika.

The Taxpayer testified that he initially expected that his work with the Auburn attorney would be ongoing and indefinite. However, he also testified that he did not move his family to Auburn until August, 1986 because until that time he was not sure that his

practice in Auburn would be permanent.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-18-15(a)(1) allows a deduction for all ordinary and necessary business expenses. That section is modeled after 26 U.S.C.A. §162, and thus federal authority should control in construing the Alabama statute, see Best v. State, 417 So.2d 197.

Expenses incurred while traveling on business may be deducted under certain circumstances. Business travel expenses are allowed "to mitigate the burden of the taxpayer who, because of the exigencies of his trade or business, must maintain two places of abode and thereby incur additional and duplicate living expenses". Kroll v. Commissioner, 49 T.C. 557, 562. The U. S. Supreme Court has established three criteria for determining the deductibility of travel expenses in Commissioner v. Flowers, 326 U.S. 465;

(1) The expense must be a reasonable and necessary traveling expense, as that term is generally understood. This includes such items as transportation fares and food and lodging expenses incurred while traveling.

(2) The expenses must be "while away from home".

(3) The expenses must be incurred in pursuit of business. This means that there must be a connection between the expenditure and the carrying on of the trade or business of the taxpayer or his employer. Moreover, such an expenditure must be necessary or appropriate to the development and pursuit of the business or trade.

The Department concedes that criteria (1) and (3) above have

been satisfied. That is, the subject expenses were reasonable and necessary and were incurred in the pursuit of business. Thus, the determinative question is whether the expenses were incurred "while away from home".

A taxpayer's "home" for purposes of computing the business travel deduction is his normal and established place of employment. Mitchell v. Commissioner, 74 T.C. 578; Commissioner v. Stidger, 386 U.S. 287. That is, the expenses can be deducted only if incurred away from the taxpayer's normal workplace. A factor in deciding whether a taxpayer is employed away from home is whether the employment was expected to be "temporary", in which case the expenses would be deductible, or "indefinite", and thus nondeductible. Cockrell v. C.I.R., 321 F.2d 504.

In the present case, the Taxpayer closed his Oneonta practice in December, 1985 and began working a majority of the time in Auburn. Also, the Taxpayer expected the work in Auburn to be ongoing and indefinite. Thus, the Taxpayer moved his employment from Oneonta to Auburn in December, 1985. That conclusion is not altered by the fact that the Taxpayer continued to live and handle a few cases in the Oneonta area. Consequently, the trailer rent and utilities paid in 1986 were not incurred by the Taxpayer "while away from home", and thus were properly denied by the Department.

The above considered, the assessment is correct as entered by the Department and should be made final, with appropriate interest.

Entered this the 15th day of November, 1989.

BILL THOMPSON
Chief Administrative Law Judge