

STATE OF ALABAMA  
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. INC. 89-129

PATRICIA ALLEN  
P. O. Box 4819  
Huntsville, AL 35815,

§

§

Taxpayer.

§

FINAL ORDER

The Revenue Department assessed income tax against Patricia Allen (Taxpayer) for the years 1985 and 1986. The Taxpayer appealed to the Administrative Law Division and the matter was submitted on a joint stipulation of facts. L. Bruce Ables, Esq. represented the Taxpayer. Assistant counsel Dan Schmaeling represented the Department. This Final order is entered based on the stipulated facts and arguments presented by the parties.

FINDINGS OF FACT

The Taxpayer purchased a farm from her parents in October, 1984 which included a residence and a chicken house. In return, the Taxpayer assumed a \$58,000.00 mortgage on the property and purchased equipment for \$17,000.00 to terminate an equipment lease that her parents had entered into and which was in default. The Taxpayer also agreed to maintain a residence and provide for her parents for the remainder of their lifetimes.

The chicken house was destroyed by an ice storm in February, 1985. The Taxpayer received insurance proceeds of \$60,000.00 as reimbursement for the loss.

The Taxpayer claimed a casualty loss in 1985 which also resulted in a net operating loss carryforward to 1986. The amount claimed as a casualty loss by the Taxpayer is not in evidence.

The Department audited the Taxpayer and denied both the 1985 casualty loss and the related net operating loss carryover. The Taxpayer subsequently appealed to the Administrative Law Division.

The arguments of the parties are set out in paragraphs 7. and 8. of the stipulation as follows:

7. The Department contends that the Taxpayer received insurance reimbursement which covered all but \$15,000.00 of the Taxpayer's cost basis and she still owns the 20 acres of farm and the personal residence and, therefore, she has a gain instead of a loss. Taxpayer's basis in the property is much less than the decrease in the fair market value before and after the casualty and, further, that the Taxpayer recovered all of her costs of the destroyed property in the \$60,000.00 insurance payment and, therefore had no deductible loss for Alabama income tax purposes.

8. The Taxpayer contends that: (1) the fair market value of the property immediately before the casualty and the difference between the fair market value immediately after the casualty far exceeded the loss claimed, and (2) her basis in the property before the casualty was more than the \$60,000.00 insurance settlement due to her continuing support of her parents, which means the Taxpayer's basis in the property is much more than the decrease in the fair market value before and after the casualty.

#### CONCLUSIONS OF LAW

Code of Ala. 1975, §40-18-15(a)(6) provides a deduction for losses to non-business property arising from sudden and unforeseen events to the extent that the loss is not compensated for by insurance or otherwise. The amount of a casualty loss is the

difference between the fair market value of the subject property immediately before the destructive event and its fair market value immediately after the event, but never more than the taxpayer's adjusted basis in the property. Helvering v. Owens, 59 S.Ct. 260, 305 U.S. 468; Westvaco v. U.S., 639 F.2d 700.

The burden of proving the existence and the amount of a casualty loss is on the taxpayer. Westvaco v. U. S., supra; duPont v. U.S., 385 F.2d 780, 783; Ward v. U.S., 428 F.2d 1288. The taxpayer must also establish a cost basis in the property and a zero basis must be allowed in the absence of such adequate proof. G.M. Leasing Corp. v. U.S., 514 F.2d 935.

In this case, there is no evidence concerning the fair market value of the chicken house either before or after the ice storm or concerning the Taxpayer's basis in the chicken house. The amount of the loss thus cannot be determined and also there is no way of determining whether the loss exceeded the \$60,000.00 received from insurance or whether the claimed loss exceeded the Taxpayer's basis in the destroyed property. The Taxpayer is obligated to establish with certainty the above amounts and in the absence of such proof the claimed casualty loss must be denied.

The above considered, the preliminary assessments in issue are correct and should be made final as entered, with applicable interest running to the date of entry of the final assessments.

Entered this 27th day of September, 1990.

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BILL THOMPSON  
Chief Administrative Law Judge