

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. INC. 90-126

SHIRLEY A. GIVENS JOHNSON
3931 Hickory Drive
Montgomery, AL 36109,

§

§

Taxpayer.

§

FINAL ORDER

The Revenue Department assessed income tax against Shirley A. Givens Johnson (Taxpayer) for the years 1986, 1987 and 1988. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on December 20, 1990. The Taxpayer represented herself at the hearing. Assistant counsel Dan Schmaeling represented the Department. This Final order is based on the evidence and arguments presented by both parties.

FINDINGS OF FACT

The Taxpayer claimed gambling winnings and losses from the Victoryland Dog Track on her 1986, 1987 and 1988 Alabama income tax returns. The Taxpayer reported only winning tickets that totaled over \$500.00.

The Department audited the returns and the Taxpayer provided losing tickets in support of her claimed losses. The Department rejected the tickets and allowed only one-half of the claimed losses. The winnings and losses reported on the returns and the amounts allowed by the-Department are set out below:

Winnings Reported	Losses Claimed	Losses Allowed
1986 \$ 6,696.00	\$15,852.00	\$ 7,926.00

1987	10,335.00	16,752.00	8,376.00
1988	37,700.00	45,000.00	22,500.00

The issue in dispute is whether the losing tickets provided by the Taxpayer are sufficient to verify the claimed losses.

CONCLUSIONS OF LAW

Gambling winnings must be reported as taxable income but can be offset by substantiated losses. However, in no case can allowable losses exceed winnings. See, Department Reg. 810-3-17-.01(1)(a)(12). The taxpayer has the burden of proving gambling losses, Donovan v. Commissioner, 359 F.2d 64, and a taxpayer's failure to keep contemporaneous records of gambling losses may constitute negligence. Marcello v. Commissioner, 380 F.2d 499.

What constitutes sufficient records is a question of fact that must be determined on a case by case basis. Mack v. C.I.R., 429 F.2d 182. Concerning dog track losses, losing ticket stubs alone are insufficient to adequately prove losses. Losing tickets are discarded after every race and it would be a simple matter to collect enough tickets discarded by other bettors to support any amount of claimed losses. The Department should not be required to accept such unreliable evidence. Rather, a taxpayer should be required to produce contemporaneous records showing races attended and the amounts won and lost on specific races (racing programs, tip sheets, log books, etc.). The Department should be allowed discretion in reviewing a taxpayer's records and less than meticulous records could be accepted in some cases. However, the

Department properly rejected the tickets provided by the Taxpayer in this case.

The Department recognized that the Taxpayer had some gambling losses and thus allowed one-half of her claimed losses. That amount is generous considering the Taxpayer's admission that she reported only winning tickets that exceeded \$500.00. It is reasonable to assume that the Taxpayer also had winning tickets that paid less than \$500.00 that should have been reported as taxable income.

The Department's adjustments are reasonable under the circumstances and should be upheld. The preliminary assessments should be made final, with interest computed to the date of entry of the final assessments.

Entered on January 3, 1991.

BILL THOMPSON
Chief Administrative Law Judge