

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. 92-288

DONALD H. LIPSCOMB
Route 2, Box 89D
Laceys Spring, AL 35754,

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Taxpayer.

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OPINION AND PRELIMINARY ORDER

The Revenue Department assessed income tax against Donald H. Lipscomb (Taxpayer) for 1989, and against Donald H. & Kathleen C. Lipscomb for 1990. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on January 13, 1993. The Taxpayer and his attorney, Stephen M. Wilson, appeared at the hearing. Assistant Counsel Beth Acker represented the Department.

The Taxpayer entered numerous trapshooting tournaments during 1989 and 1990. The issue in dispute is whether his trapshooting related expenses can be deducted as business expenses. That issue turns on whether the trapshooting activities were conducted for the primary purpose of making a profit.

The Taxpayer started trapshooting as a hobby in 1976. He recorded his progress by maintaining a diary beginning in 1977 in which he recorded each time he practiced, the location, conditions, etc., and how many targets he hit.

From 1976 until 1988, the Taxpayer enjoyed trapshooting as a hobby only, primarily because his first wife didn't enjoy the sport and also because he couldn't afford to pursue the sport more

seriously. Prior to 1988, the Taxpayer practiced only once or twice a month and entered only one or two local tournaments a year.

The Taxpayer decided to try trapshooting professionally in 1988 because he had recently separated from his first wife and was better off financially.¹ He also believed that he was good enough to compete professionally.

To prepare himself, the Taxpayer performed eye exercises and either practiced with his gun or worked out daily. The Taxpayer also studied the techniques and methods of leading trapshooters throughout the country.

The Taxpayer entered 19 tournaments in 1989 and 23 tournaments in 1990. Most of the tournaments were state or regional events, but he also participated in the grand national championship in Ohio in both 1989 and 1990. The total purse for the larger tournaments was approximately \$250,000 to \$285,000, with an individual grand prize of up to \$40,000. Smaller tournaments normally offered a purse of \$15,000 to \$20,000, with a grand prize starting at \$2,000.

The Taxpayer paid \$3,094 on tournament entry fees in 1989 and won a total of \$2,484. He paid \$3,428 on entry fees in 1990 and won \$2,236. The most he ever won in one tournament was between \$700 and \$800. However, the Taxpayer testified that on several occasions he was only one or two targets away from winning a grand prize.

¹ The Taxpayer remarried in June, 1990. He testified that his second wife encouraged him to trapshoot professionally and traveled with him to tournaments in their motor home.

The Taxpayer is a member of the American Trapshooting Association, which is the governing body for trapshooters in the United States and Canada. The Taxpayer was ranked third in Alabama by the Association in 1989 and second in 1990. The Taxpayer also taught a trapshooting class at the University of Alabama at Huntsville during the subject years.

Trapshooting tournaments usually last three or four days and are held in remote, isolated locations away from motels and restaurants. Consequently, most top shooters travel to tournaments in their own motor home so they can sleep and eat at the tournament site and rest between events.

For that purpose, the Taxpayer purchased a used 1977 motor home in 1989. The motor home cost approximately \$22,000 and was used exclusively to attend trapshooting tournaments. The Taxpayer figured that the motor home would give him a competitive advantage and would only cost approximately \$100 more a month than staying in motels and eating in restaurants during tournaments.

Unfortunately, the vehicle was not in good condition and broke down several times during 1989 and 1990. Faced with continuing repair bills and an estimate of \$6,000 - \$8,000 to replace the vehicle's roof, the Taxpayer decided to trade for a new model in 1990. The new vehicle cost approximately \$64,000.

The Taxpayer injured his leg while leveling his motor home at a tournament site in June 1991. As a result, he missed the peak

tournament months of June through August 1991. Because of the injury, and because of this tax audit, the Taxpayer has stopped shooting professionally. However, he has converted his motor home into a portable gunsmith shop and intends to travel to tournaments and operate a full-time gunsmith business in the future.

The Taxpayer claims that his trapshooting was a business. Consequently, he deducted \$17,685 in trapshooting related expenses on his 1989 Alabama tax return and \$29,600 on his 1990 return. The deductions included car and truck expenses, depreciation, interest, and repairs on the motor homes, tournament entry and related fees, shooting supplies, gunsmith classes, and other miscellaneous shooting expenses. The Department concedes that the Taxpayer kept detailed and accurate records of all expenses.

The Department denied the deductions based on its position that the Taxpayer's trapshooting was a hobby and not a trade or business or a transaction entered into for profit. See, Code of Ala. 1975, §§40-18-15(a)(1) and (5). The Department also made various other adjustments which are not disputed by the Taxpayer.

That is, the Taxpayer had erroneously reported federal wages instead of state wages on the returns; a federal tax refund was properly included in gross income; and Schedule C interest (relating to trapshooting) was disallowed, but a portion was allowed on Schedule A.

Code of Ala. 1975, §40-18-15(a)(1) allows a deduction for all

ordinary and necessary expenses incurred in a trade or business.

Subsection (5) also allows a deduction for non-business losses incurred in a transaction entered into for profit. The above statutes are modeled after their federal counterparts, 26 USC §§162 and 212, respectively. In such cases, case law interpreting the federal statutes should be followed in interpreting the similar Alabama statutes. Best v. Department of Revenue, 417 So.2d 197.

Also, IRC §183 specifically addresses the issue of whether an activity is entered into for profit. While Alabama has no statute similar to §183, regulations relating to §183 can be helpful as a guideline.

An expense can be deducted if the primary purpose for the activity was to make a profit. State, Department of Revenue v. Dawson, 504 So.2d 312, at pg. 313, and federal cases cited therein.

The test is whether, from an objective review of all circumstances, the Taxpayer acted with a good faith expectation of making a profit. Dawson, supra, at pg. 313, citing Zell v. CIR, 763 F.2d 1139, at pg. 1142.

Treas. Reg. §1.183-2(b) sets out a nonexclusive list of nine objective factors to be considered in determining whether an activity is "for profit." Those factors are:

- (1) The manner in which the taxpayer carries on the activity;
- (2) The expertise of the taxpayer or his advisor;

- (3) The time and effort expended by the taxpayer in carrying on the activity;
- (4) Expectation that assets used in the activity may appreciate in value;
- (5) The success of the taxpayer in carrying on other similar activities;
- (6) The taxpayer's history of income or losses with respect to the activity;
- (7) The amount of occasional profits earned, if any;
- (8) The financial status of the taxpayer; and
- (9) Elements of personal pleasure or recreation.

The Department argues that the Taxpayer's trapshooting was not entered into for profit because: (1) the Taxpayer did not keep business-like books and records; (2) the Taxpayer's expenses greatly exceeded his winnings in both 1989 and 1990; (3) the purchase of the second motor home for over \$64,000 showed lack of a profit motive; and (4) the Taxpayer enjoyed trapshooting as a hobby.

The Taxpayer did not keep a formal set of books and records. However, the Department concedes that he did keep meticulous records of all trapshooting expenses. A taxpayer's records need not be formal books as long as they properly record all relevant data. Jackson v. Commissioner, 59 T.C. 312, at pg. 314. Lack of formal business records does not prove lack of a profit motive.

The Taxpayer's expenses far exceeded his winnings in both 1989 and 1990. However, in a highly competitive sport like trapshooting, it is reasonable that a beginner would not show a profit in his first years of competition. The Taxpayer testified that on several occasions he was within one or two targets of winning a grand prize, and that he expected to win a tournament in the near future as he gained experience and confidence. A reasonable expectation of substantial profit indicates a profit motive in spite of actual losses. Bryant v. CIR, 928 F.2d 745.

The high cost of the new motor home when compared to the Taxpayer's winnings does support the Department's case. However, a motor home was necessary for the Taxpayer to compete successfully in major tournaments, and the Taxpayer traded for a new motor home to avoid the high repair and maintenance costs he had incurred with his used motor home. The new motor home was "bare bones" and was not used for leisure travel. The Taxpayer's primary purpose in purchasing both motor homes was to benefit his trapshooting, not leisure travel and enjoyment.

The Taxpayer was a skilled trapshooter and enjoyed the challenge of shooting against the best in the country. The fact that he enjoyed trapshooting is not fatal to a profit motive. Most pro golfers and other pro athletes also probably enjoy their profession. The Taxpayer spent much time and energy in practicing

and otherwise improving his trapshooting abilities, which is an important factor in showing a profit motive. State v. Dawson, supra, at pg. 313, citing Snyder v. US, 674 F.2d 1359.

Under the circumstances, I believe that the Taxpayer engaged in trapshooting during the years in issue for the primary purpose of making a profit. The Taxpayer's profit motive was at least as strong as in Dawson, supra. Accordingly, his expenses relating to trapshooting are deductible.

The Department is directed to recompute the assessments in issue by allowing all trapshooting related deductions. The Department should then inform the Administrative Law Division of the adjusted amounts due and a Final Order will be entered accordingly. The Final Order, when entered, may be appealed to circuit court pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered on March 24, 1993.

BILL THOMPSON
Chief Administrative Law Judge