

JAMES R. JARRELL
2496 Peach Court
Myrtle Beach, SC 29577,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 99-481

FINAL ORDER

The Revenue Department assessed 1997 income tax against James R. Jarrell (Taxpayer). The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, § 40-2A-7(b)(5)a. A hearing was conducted on January 4, 2000. The Taxpayer submitted a written response in lieu of appearing. Assistant Counsel Keith Maddox represented the Department.

The issues in this case are:

- (1) Whether the Taxpayer must include as income reimbursement for travel expenses received from his employer in 1997; and
- (2) Can the Taxpayer deduct travel-related expenses incurred when he traveled to and from his home in South Carolina to his place of employment in Alabama?

The Taxpayer resides in South Carolina. In 1997, the Taxpayer operated a bingo game for the Piedmont Jaycees in Piedmont, Alabama. The Taxpayer's job was permanent and continuous.

The Taxpayer traveled from his home in South Carolina to Piedmont every Thursday. He worked in Piedmont through the Saturday night bingo games, and returned to South Carolina on Sunday. The Jaycees reimbursed the Taxpayer for his travel expenses to and from South Carolina.

The Taxpayer filed a 1997 resident Alabama return. He deducted his travel expenses to and from Piedmont on Schedule A of the return. He also failed to report as income the expense reimbursement he received from the Jaycees.

The Department rejected the Taxpayer's resident return and instead completed a Form 40NR non-resident return for the Taxpayer. The Department also included the expense reimbursement as income, and disallowed the travel expenses as non-deductible commuting expenses. The Taxpayer appealed.

The Taxpayer contends he had a verbal agreement with the Piedmont Jaycees that he did not have to move to Alabama. He also argues that the Alabama Attorney General informed him that there would be no problem with him working in Alabama.

As does the Department, I understand and appreciate the Taxpayer's good faith arguments. However, the Taxpayer's arguments have no effect on his Alabama income tax obligations. The Department properly calculated the Taxpayer's 1997 Alabama liability as required by Alabama law.

First, gross income for Alabama income tax purposes is broadly defined to include gains, profits and income derived from salaries, wages, or compensation for personal services of whatever kind, or in whatever form paid, including . . . income derived from any source whatever, . . . Code of Ala. 1975, '40-18-14(1). The reimbursement received by the Taxpayer from his employer clearly constituted gross income that should have been reported on the Taxpayer's 1997 return.¹

¹An exception would have been if the reimbursement was received under an accountable plan. An accountable reimbursement plan is present if (1) there is a business connection for the expenses, (2) the employee must be required to substantiate

Second, travel expenses may be deducted as business expenses only if three criteria are met. First, the expenses must be reasonable and necessary travel expenses. Second, the expenses must be incurred while away from home. Third, the expenses must be incurred in the pursuit of business. Criteria (2) is not present in this case.

A taxpayer's home for purposes of computing the business travel deduction is the taxpayer's normal and established place of business. Mitchell v. Commissioner, 74 T.C. 578 (1980). Commuting expenses incurred while an employee is traveling between his personal residence and his tax home, i.e. his established place of employment, cannot be deducted. Kasun v. U.S., 671 F.2d 1059 (1982). The Taxpayer's established place of business is the bingo operation in Piedmont, Alabama. Consequently, his commuting expenses to and from Piedmont cannot be deducted.

The final assessment in issue is affirmed. Judgment is entered against the Taxpayer for 1997 tax and interest of \$709.96. Additional interest is also due from September 8, 1999.

This Final Order may be appealed to circuit court within 30 days pursuant to Code

the expenses to the employer, and (3) the employee must return to the employer amounts in excess of the substantiated expenses. See generally, Treas. Reg. ' 1.62-2. There is no evidence in this case that the expense reimbursements were received under an accountable plan. Consequently, the reimbursement constituted reportable income to the Taxpayer.

of Ala. 1975, ' 40-2A-9(g).

Entered January 6, 2000.

BILL THOMPSON
Chief Administrative Law Judge

BT:dr

cc: Keith Maddox, Esq.
James R. Jarrell
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