SHAWN E. SCOTT 150 HARVEY WOODS DRIVE COVINGTON, GA 30016,	§	STATE OF ALABAMA ALABAMA TAX TRIBUNAL
Taxpayer,	§	DOCKET NO. INC. 13-1280
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER

The Revenue Department partially denied a refund of 2011 income tax requested by Shawn Scott ("Taxpayer"). The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(c)(2)a. A hearing was conducted on August 14, 2014. The Taxpayer and his representative, Thomas Jones, Sr., attended the hearing. Assistant Counsel Ralph Clements represented the Department.

The issue in this case is whether the Department properly disallowed a portion of a moving expense deduction claimed by the Taxpayer on his 2011 Alabama income tax return.

The Taxpayer worked for CSX Corporation during the year in issue. He claimed a $41,752 moving expense deduction on his 2011 Alabama income tax return. The Department initially disallowed the deduction in full because the Taxpayer's address on his 2011 Alabama return was in Covington, Georgia, which indicated to the Department that the Taxpayer had not moved to Alabama in 2011.

The Taxpayer subsequently provided information showing that he had moved from Georgia to Alabama in 2011, which the Department accepted as correct. The Taxpayer also submitted information specifying the type of moving expenses paid by the Taxpayer's

employer, who had contracted for a third party, Brookfield Global Relocation Service ("Brookfield"), to arrange the move and pay the related expense.

A document prepared by Brookfield and submitted to the Department by the Taxpayer entitled "Moving Expense Payments" indicated that "Qualified (Excludable) Moving Expenses" of $7,981.59 had been paid on the Taxpayer's behalf to a third party in 2011 for transportation and storage of household goods. The document also stated that the above amount was not included in the Taxpayer's wages. The document further identified amounts paid as "Non-Qualified (Taxable) Moving Expenses." The document showed under that category that mortgage interest of $1,799 had been paid directly to the Taxpayer, which, according to the document, "may be deductible on your tax return." It also identified "all other taxable moving expenses" that totaled $30,472.50 paid directly to the Taxpayer, and $749.51 paid to others on the Taxpayer's behalf. The "Non-Qualified (Taxable)" amount paid directly to the Taxpayer or on the Taxpayer's behalf totaled $33,021.01. When that amount is added to the excludable moving expenses of $7,981.59, the total moving expenses paid in 2011 was $41,002.60.

Based on the above information, the Department did not include the $7,981.59 as income to the Taxpayer because that amount constituted excludable income paid on the Taxpayer's behalf. It disallowed the taxable or non-qualified (non-deductible) balance of $33,021.01. The $4,175 refund claimed by the Taxpayer on his 2011 Alabama return was accordingly reduced to $2,759. This appeal followed.

The Taxpayer's representative argues that the total moving expenses of $41,002.60 should be allowed in full. He claimed in his appeal notice that "[i]f the Department of Revenue prevails in this situation it will deter employees from actually transferring to (the)

State of Alabama because they will have to pay more taxes in the year of the move. . . ." He also asserts that another CSX employee that also moved to Alabama had claimed the same moving expense deductions as the Taxpayer, and that the Department allowed those deductions in full. The representative thus claims that the Taxpayer is being treated unfairly, and should receive the same tax treatment as the other CSX employee that moved to Alabama. The representative's post-hearing letter brief reads in part, as follows:

> At the same time they also questioned Mr. Scott's moving expenses they also questioned the moving expenses of a fellow employee at CSX Corporation who was transferred to the state of Alabama by the CSX Corporation. When the other CSX Corporation employee responded with the identical paperwork provided by the third party mover Brookfield Global Relocation Services that Mr. Scott was provided by the CSX Corporation his moving expenses were accepted even though they are in the identical Taxpayer Class and their dual moves identical in content and substance. The Alabama Department of Revenue response was noncommittal when we pointed to this unfair and inequitable treatment of taxpayer.
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> We are very concerned with the State of Alabama Department of Revenue coming to very radically different determinations on identical cases. And they refuse to give us a justification for coming to very radically different determinations in these cases. It is possible it is a training issue for the different auditors involved but our clients should not suffer inadvertently because of a training issue.
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> The major requirement for an Income Tax System to work is for all taxpayers to know that those administering the tax laws are fair and equitable. If the Alabama Department of Revenue is not administrating their system on a fair and equitable manner then they are undermining their own system and discouraging the Volunteer filing of the Alabama Tax Incomes by Alabama Taxpayers. Statistically it has been determined that Income Taxation Systems have a higher rate of compliance when the taxpayers feel the system is Fair and Equitable. When the taxpayers feel the system is fixed sort to speak, they are less inclined to report fully their income and more likely to overstate their deductions.

In its Post-Hearing Brief, the Department explains the Alabama law concerning the income tax moving expense deduction, and the application of that law to the facts in this case, as follows:

> The Department's understanding of the law applicable to moving expenses was set out in its Answer. In short, Alabama law provides that a Taxpayer's income includes "gains, profits and income derived from salaries, wages, or compensation for personal services of whatever kind, or in whatever form paid . . . and the income derived from any source whatever, including any income not exempted under this chapter and against which income there is no provision for a tax."
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> Of course, over the years there have been many questions concerning exactly what taxable income does or does not include. Helpfully, Alabama law on this point is modeled after federal income tax law, which also takes a broad, all-inclusive approach to defining "income" for purposes of the federal income tax. The interpretation of Alabama tax laws can be aided by looking to interpretations of similar federal law where the Alabama law is patterned after the federal.
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> The issue of whether reimbursement for moving expenses incurred by an employee (or its economic equivalent, direct payment by the employer of the employee's expenses) counts as gross income for that employee is directly answered by federal tax law. Treasury regulations directly on point state that such reimbursements or payments do constitute gross income to the employee to whom or on whose behalf they are paid.
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> Indeed, Alabama law does directly address this issue, because Alabama's income tax law has a provision mirroring federal tax law, providing for the exclusion of such reimbursements or payments from a taxpayer's gross income in certain circumstances. Alabama income tax code section 40-18-14(3)k provides an exclusion from gross income for purposes of Alabama income tax to the same extent as an exclusion is provided for under federal income tax law for two named Internal Revenue Code sections; sections 125 and 132. In particular, section 132 provides the federal tax rules concerning the exclusion of moving reimbursements. In fact, section 132 defines "qualified moving expense reimbursement" by cross-reference to I.R.C. section 217, which determines whether moving expenses paid by an employee (but <u>not</u> reimbursed by the employer) are deductible. In short, if

the employee had directly paid a moving expense deductible under I.R.C. § 217, that same expense is excludable from the employee's income by section § 132(a)(6) when it is reimbursed by the employer or directly paid by the employer to a service provider on the employee's behalf. This is the scheme wholly adopted into Alabama income tax law by § 40-18-14(3)k.

The key rule regarding moving expenses, then, for both federal and Alabama income tax law is found in I.R.C. § 217, which allows the deduction of unreimbursed "moving expenses." Section 217 contains the definition of the term "moving expenses" for purposes of applying the deduction. The definition contains only two parts. First, the deduction applies to "reasonable expenses of moving household goods and personal effects from the former residence to the new residence." Second, the deduction applies to "reasonable expenses . . . of of traveling (including lodging) from the former residence to the new place of residence." No other expenses are included in the definition of the term "moving expenses." Therefore, no other expenses are deductible in connection with a taxpayer's move, and, through § 132, no other amounts paid or reimbursed by an employer on an employee's behalf are excludable from income for federal income tax purposes, or for Alabama income tax purposes under § 40-18-14(3)k. Further, even such amounts as are deductible under § 217 must be "reasonable" in amount. Expenses that exceed a reasonable amount, even for the items enumerated in § 217(b)(1)(A) and (B), are not deductible.

Certain expenses relating to real estate costs associated with an employee's work-related move were once deductible under § 217(e). Such expenses included "real estate commissions, attorneys' fees, title fees, escrow fees, so called 'points' or loan placement charges which the seller is required to pay, State transfer taxes and similar expenses paid or incurred in connection with the sale or exchange." However, § 217(e) was repealed by the Omnibus Budget Reconciliation Act of 1993. Since that time, real estate costs have not been deductible under § 217, and therefore have not been excludible under § 132 when reimbursed or paid on an employee's behalf.

* * *

Moving expenses paid by a taxpayer's employer to a third party, or reimbursed to the taxpayer, are never deductible because they do not represent an expenditure by the Taxpayer. Such amounts may or may not be includible in income, depending on what the payments were for. If the

> payments were for services described in I.R.C. § 217(b)(1)(A) or (B) (that is, movement of household goods or travel from the old home to the new one), they are excluded from income. Otherwise, such payments are specifically included in income.
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> In this case, the Department did exclude from the Taxpayer's income the $7,981.59 that Brookfield paid for excludible services. The other payments, from the descriptions that Brookfield provided to the Taxpayer and he provided to the Department, were not related to services described above. Therefore, they are includible in his income. This is the correct and the only proper result given the facts. Further, these items are not deductible for the very same reasons they were includible; §§ 132 and 217 are designed to work in tandem in this way; items are either includible and not deductible on the one hand, or else excludible (if paid by others) or deductible (if directly paid by the Taxpayer) on the other. Here, the Taxpayer directly paid no claimed expenses. Therefore, all the items that were not excludible must necessarily be both includible and non-deductible.

The Department's brief correctly states the applicable Alabama (and federal) law concerning moving expenses. The Taxpayer did not directly pay any of the moving expenses in issue. Consequently, as explained in the Department's brief, none of the expenses can be deducted. The $7,981.59 paid by Brookfield on behalf of the Taxpayer for the transportation and storage of household goods was properly excluded from income by the Department because it would have been deductible if paid directly by the Taxpayer and the Taxpayer had not been reimbursed by his employer for the expense. The remaining "non-qualified" expenses paid on the Taxpayer's behalf would not have been deductible if paid directly by the Taxpayer, and thus were properly included in the Taxpayer's income by the Department.

As indicated, the Taxpayer's representative claims that if the Department is correct, employees will be deterred from moving to Alabama "because they will have to pay more

taxes in the year of the move. . . ." I note, however, that Brookfield also paid the Taxpayer $7,852.66, $1,570.53, and $455.46 to offset the federal, state, and Medicare taxes, respectively, he incurred as a result of the taxable moving expenses he received from CSX via Brookfield. The Taxpayer was thus reimbursed for the tax due on the income.

The representative also claims that the Department is not administering the tax laws in a fair and equitable manner because a similarly situated CSX employee claimed and was allowed all of his moving expenses, while the Taxpayer is not. I disagree.

I agree that the Department should administer the tax laws in a fair and equitable manner, and that all taxpayers should be treated alike. But if a deduction is not allowed by law, the fact that the Department improperly allows the deduction to one taxpayer does not mean that it must also improperly allow the deduction to all similarly situated taxpayers. The Department is also correct that the Department cannot be estopped from correctly applying the tax laws based on a prior error by the Department, be it false information or advice given by a Department employee or the prior improper allowance of a deduction not authorized by law. See generally, *Community Action Agency of Huntsville, Madison County, Inc. v. State*, 406 So.2d 890 (Ala. 1981); *State v. Maddox Tractor and Equipment Co.*, 69 So.2d 426 (1953).

There is also no evidence that the other CSX employee that the representative claims was similarly situated was in fact so situated. There is no evidence concerning what moving deductions the other employee claimed, whether the Department reviewed and allowed the deductions, and if so, to what extent they were allowed. And as discussed, even if the other employee was similarly situated, and had claimed identical deductions

that were allowed, or at least not denied, by the Department, it does not follow that the deductions claimed by the Taxpayer must also be allowed.

The Department correctly disallowed the moving expenses in issue. The Department's reduction of the Taxpayer's refund is affirmed. Judgment is entered accordingly.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered October 9, 2014.

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BILL THOMPSON
Chief Tax Tribunal Judge

bt:dr
cc: Ralph M. Clements, III, Esq.
Thomas A. Jones, Sr.