

ALABAMA TAX TRIBUNAL

ORANGE J. JR. &	§	
ANDREA K. HOLLOWAY,	§	
Taxpayers,	§	DOCKET NO. INC. 18-299-JP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.	§	

FINAL ORDER

This appeal involves a final assessment of individual income tax for 2016. The Taxpayers claimed certain deductions on Schedule A of their return, and the Alabama Department of Revenue requested records from the Taxpayers to verify those deductions. The Revenue Department allowed some of the deductions, but wholly or partially disallowed others. Following the entry by the Revenue Department of a final assessment, the Taxpayers appealed to the Alabama Tax Tribunal (which is a separate state agency from the Alabama Department of Revenue).

Before the Tax Tribunal, the issues in dispute were narrowed to one item – a \$2,600 deduction for non-cash donations to The Salvation Army. During the audit stage, the Revenue Department had agreed to allow \$1,405 of that amount as a deduction, but claimed that the remaining \$1,195 should be disallowed as being excessive. The final assessment was based on the Revenue Department's adjustments.

A hearing was held on February 28, 2019. Assistant Counsel Gwendolyn Garner represented the Revenue Department. The Taxpayers did not appear for the hearing, having informed the Tax Tribunal approximately ten days earlier that they would not appear

but would rather the Tax Tribunal rule based on records they had submitted.

The appeal record shows that the Taxpayers donated clothes and household items in 2016 which the Taxpayers state were acquired in 2011 for a total cost of \$5,200. As stated, the Taxpayers deducted \$2,600 – or 50% of their acquisition cost – as a donation to charity. They provided to the Revenue Department, and to the Tax Tribunal, a handwritten receipt from The Salvation Army showing that they donated twelve large bags of “clothes, shoes, jackets, purses, coats, household items” and that the items were in “good” condition. The Revenue Department also had been provided, apparently by the Taxpayers, a Salvation Army Donation Guide, which listed various categories of items and a low and high range for the dollar values of specific items within each category. For example, under the category of women’s clothing, a blouse has a range of \$2.50 to \$12. The donation guide was introduced at the hearing as Revenue Department Exhibit 1.

Prior to the hearing, in a response to the Tax Tribunal, the Revenue Department charted the clothing items donated by the Taxpayers, the low and high ranges for those items as shown by The Salvation Army’s Donation Guide, the amounts allowed by the Revenue Department based on those guidelines, and the amounts actually deducted by the Taxpayers. For all items except one, the deductions claimed by the Taxpayers exceeded the high end of each item’s range. For the one exception (blouses), the amount claimed per blouse fell \$.76 below the high end of the range. The amounts allowed by the Revenue Department for each item fell very close to the midpoint of each item’s range.

Concerning the household items, the Taxpayers described those only as “small appliances, bedding, copier, chairs, pillows, lamps, pictures.” The Taxpayers claimed \$962, or 50% of their acquisition cost, as a deduction. The Revenue Department allowed

\$577, or 30% of the Taxpayers' cost.

Ala. Code § 40-18-15(a)(10) allows taxpayers to deduct contributions to charity to the extent such deductions are allowed for federal income tax purposes under § 170 of the Internal Revenue Code. Section 170 requires that, at a minimum, donated clothing and household items be in good condition to be deductible. And 26 C.F.R. § 1.170a-1(c) states that contributions of property other than money are to be valued at the property's fair market value as of the time of the donation. Fair market value is defined as the price at which a willing buyer and a willing seller would agree to buy/sell that item if both had reasonable knowledge of relevant facts and neither party was under compulsion to buy or sell. Further IRS Publication 561 cautions those who donate used clothing and household items that the fair market value of such items usually is far less than the amount paid by the donor to obtain the item. (Publication 561, p. 4, April 2007)

During the hearing, the Revenue Department argued that the low end of the ranges established by The Salvation Army represented items in "good" condition because federal law required that, at a minimum, items be in good condition to be deductible. In other words, if an item was in less than good condition, the item could not be deducted, so the minimum ("good") condition should match the minimum amount of the range. As stated, the Taxpayers' receipt listed all items as being in good condition. Nevertheless, the Revenue Department allowed the Taxpayers an amount for each item that significantly exceeded the low end of that item's range.

As a matter of statutory law, final assessments are presumed correct and the burden is on a taxpayer to prove that the assessment is incorrect. Ala. Code § 40-2A-7(b)(5)c.3. Here, the Taxpayers have offered no evidence to show that the items they

donated, which were in good condition, were of such high value as to exceed the high end of the Donation Guideline ranges. And they offered no evidence to overcome the admonition in IRS Publication 561 that the fair market value of the items usually is far less than the amount the Taxpayers paid to acquire those items. Instead, as pointed out by the Revenue Department during the hearing, the marketplace for the sale of these items, where fair market value would be determined, is in the thrift store where such donated items are offered for sale to the public. It is highly unlikely that thrift-store customers who are looking for bargain prices would pay premiums that exceeded the high end of the valuation ranges.

During the hearing, the Tax Tribunal questioned the Revenue Department on whether the Taxpayers had been allowed a deduction for the amount of tax they paid when they renewed their car tags. The Revenue Department stated that the amount claimed by the Taxpayers had been allowed to them early on in the audit process.

The final assessment is affirmed. Judgment is entered against the Taxpayers for 2016 tax and interest of \$231.30. Additional interest is also due from the date the final assessment was entered on February 9, 2018.

This Final Order may be appealed to circuit court within 30 days, pursuant to Ala. Code § 40-2B-2(m).

Entered March 1, 2019.

/s/ Jeff Patterson

JEFF PATTERSON
Chief Judge
Alabama Tax Tribunal

jp:dr

cc: Orange & Andrea Holloway
Gwendolyn B. Garner, Esq.