ALABAMA TAX TRIBUNAL

JUDE & JANE ONWUKA,	§	
Taxpayers,	§	DOCKET NO. INC. 17-1453-LP
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

OPINION AND PRELIMINARY ORDER

This appeal involves final assessments of 2013 through 2015 income tax. A hearing was conducted on May 23, 2019, at the Department of Revenue's Taxpayer Service Center in Hoover. The Taxpayer's representative, Lucky Azunda, represented the Taxpayers. Assistant Counsel Craig Banks represented the Revenue Department. The parties submitted post-hearing briefs and reply briefs.

The Revenue Department entered Preliminary Assessments of 2013 through 2015 income tax on April 4, 2017. The Taxpayers' representative filed Petitions for Review of the Preliminary Assessments. Final Assessments were entered, and the Taxpayers appealed to the Tribunal.

The Taxpayer husband (individually "Taxpayer") operates a business called both Jeno's Towing and Jeno's Auto Recycle ("Jeno"), and possibly other names. The Taxpayer wife works as a nurse. The Taxpayers and their children live in Huntsville, Alabama.

For 2013, the Department received Forms 8300 from the IRS reporting transactions involving the Taxpayer for which the Taxpayer was paid over $213,000 from Manheim Atlanta. The Taxpayer did not report this income to the Department.

During the review of the Preliminary Assessment, the Department received a 59-page fax

from the Taxpayer's representative's fax number, which lists transactions between the Taxpayer's business Jeno Auto Sales and Manheim Atlanta, an auction house (the "Manheim Fax"). The Manheim Fax lists the Taxpayers' names and social security numbers. It details purchases and sales of automotive vehicles. The Taxpayer contends that he has never seen the Manheim Fax, has no knowledge of Manheim Atlanta, has never done business with it, and has not purchased or sold cars at an auction other than 2 or 3 purchases from an auction called Copart in Decatur. The Taxpayer's representative stated that he had not seen the Manheim Fax prior to the hearing either, although he did admit that it is from his fax number. He speculates that the Taxpayer received the document from the Department and then brought it to his office to send back to the Department during the review of the Preliminary Assessment. The Taxpayer's representative argues that the Department should have acquired more information regarding the Manheim Fax. The Department has done so:

> [I]n addition to the information that the Department received by fax from the Taxpayers' representative's office, there is other information connecting the Taxpayer to Jeno Used Auto Sales and to Manheim Atlanta. The city of Huntsville's website shows that it issued a business license to the Taxpayers for a business named Jeno Used Auto Sales for 2017 and 2018. The address listed for Jeno Used Auto Sales is the same address listed for licenses for other businesses associated with the Taxpayers. Jeno Used Auto Sales also has a currently operating website, listing automobiles for sale at www.jenousedautos.com. The location address on the website is the same address as the business license address used by the Taxpayers. The Department also received federal Form 8300 data for 2013. Certain institutions are required to file a Form 8300 when a cash transaction exceeding $10,000 occurs. In this case, the Form 8300 data shows that the Taxpayers received eleven cash payments from Manheim Atlanta during the 2013 tax year totaling $213,210.
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> The business address on the website, the business license information, the Form 8300 data, and the Manheim Atlanta information submitted from the Taxpayer's representative's fax machine all connect the Taxpayers to Jeno Used Auto Sales. Therefore, the evidence is clear that the Taxpayers conduct business under the name Jeno Used Auto Sales. The Department, using the Form 8300 data and the Manheim Atlanta information received via fax from the Taxpayer's representative's office, used the best information reasonably available to calculate the Taxpayers income

> from Jeno Used Auto Sales for the audit period. Because the available information clearly connects the Taxpayers to Jeno Used Auto Sales and the Department used the best information reasonably available, the Department's audit adjustments related to Jeno Used Auto Sales are due to be affirmed by the Tribunal. (Exhibit references omitted).

Alabama Department of Revenue's Post-Hearing Brief at 3 – 5.

Along with its post-hearing brief, the Revenue Department submitted copies of the documents used in the audit. One document was a fax cover page for the Manheim Fax from the Taxpayer's representative with a letter from him to the auditor. The representative tells the auditor on the cover page, "Items from auction for the years are also noted and document attached that described what was purchase and the corresponding auction sales." This document is further evidence that the representative did provide the Manheim Fax and that the Taxpayer did participate in auction purchases and sales for the years at issue. For this and other reasons described herein, the Taxpayer and his representative are not credible witnesses, and they have not met their burden of proof in challenging the validity of the Department's calculations from the Manheim Fax.

The Department used the Manheim Fax to calculate gross receipts of Jeno for years 2014 and 2015. Although the Manheim Fax also included transactions from 2013, it only showed gross receipts of approximately $15,000 while the Forms 8300 showed gross receipts of more than $213,000. Thus, the Forms 8300 were relied upon for 2013. The Department's adjustments are affirmed.

For all years, the Department used the Manheim Fax to calculate cost of goods sold ("COGS") and allowed the COGS amount and business license expense as deductions on Schedule C. The Taxpayer contested the COGS calculation. However, the Taxpayer has not met his burden in this challenge. The COGS calculation stands as adjusted herein. In 2015, a minor amount of repair

and maintenance expenses were allowed as they were substantiated. All other Schedule C expenses were disallowed for all years as unsubstantiated.

The Taxpayers claimed rental income and expenses. While mortgage interest, real estate taxes, and some other expenses were substantiated and allowed, all other expenses were disallowed as unsubstantiated. The Taxpayer provided receipts at the hearing for rental and business expenses. The Department has reviewed the receipts and allowed the following adjustments:

> **2013 Tax Year**
> Based on the receipts submitted at the hearing (hearing exhibit 3), and public property tax records, adjustments were made to Schedule E to increase the loss from $4,123 to a loss of $13,026. The adjustment of $8,903 was comprised of additional cleaning and maintenance of $2,175, additional repairs of $6,405, and additional taxes of $323.
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> **2014 Tax Year**
> Based on the receipts submitted at the hearing (hearing exhibit 8), and public property tax records, adjustments were made to Schedules C and E. An adjustment was made to Schedule C to allow repairs and maintenance of $2,240 which reduced the net gain from $83,105 to $80,865. Adjustments were made to Schedule E to reduce the gain from $2,587 to a loss of $5,251. The adjustment of $7,838 was comprised of a reduction to cleaning and maintenance of $163, additional repairs of $7,664, and additional taxes $337.
> **2015 Tax Year**
> Based on the receipts submitted at the hearing (hearing exhibit 13), and public property tax records, adjustments were made to Schedules C and E. An adjustment was made to Schedule C to allow additional repairs and maintenance of $3,655 which reduced the net gain from $95,603 to $91,948. Adjustments were made to Schedule E to reduce the gain from $1,520 to a loss of $9,382. The adjustment of $10,902 was comprised cleaning and maintenance of $1,425, additional repairs of $8,903, and additional taxes $574.

Revenue Department's Post-Hearing Brief at 7 – 8.

The Taxpayer provided a spreadsheet of mileage for Jeno's. At the hearing, the Taxpayer stated that he would provide the underlying documentation regarding mileage. He has provided a handwritten mileage log. Deductions for travel expenses are determined in accordance with 26

U.S.C. § 274. Ala. Code § 40-18-15(a)(20). "Because deductions for business-related travel, entertainment, or similar type expenses are particularly susceptible to abuse, those deductions must be strictly documented with exact records verifying the (1) amount, (2) time, (3) place, and (4) business purpose for the travel, entertainment, etc." *Mary J. Jones v. State of Alabama*, Dkt. No. Inc. 15-516 (A.T.T. 3/15/2016). Additionally:

> The criteria for claiming travel expenses was explained in *Langer v. C.I.R.*, 980 F.2d 1198 (1992):
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> > A taxpayer cannot deduct travel expenses under 26 U.S.C. § 162 unless the taxpayer meets the substantiation requirements of § 274(d). The taxpayer must substantiate the amount, time, place, and business purpose of each travel expenditure "by adequate records or by sufficient evidence corroborating [the taxpayer's] own statement." Treas. Reg. § 1.274-5(c) (1983). To substantiate expenditures with "adequate records," a taxpayer must keep an account book or similar record along with supporting documentary evidence that together establish each element of the expenditure. *Id.* § 1.274-5(c)(2)(i). To show substantiation by other "sufficient evidence," the taxpayer must establish each element by the taxpayer's own detailed statement and by corroborating evidence. *Id*. § 1.274-5(c)(3).
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> *Langer*, 980 F.2d at 1199.

Here, the Taxpayer's records supply only the date, place, and miles traveled. The business purpose is not recorded.

The Taxpayer's testimony regarding Jeno's is conflicting. He testified that the only business of Jeno's was purchasing junk cars for cash (under $400) or just picking them up at no cost and fixing them up to sell or selling them for parts. He owned a tow truck for the purpose of picking up the cars he acquired. Occasionally, he would tow a vehicle for a family member or friend. The Tribunal asked the Taxpayer if he served the public – could a person call him to tow his or her broken-down vehicle to a mechanic. The Taxpayer replied no, that was not his business. He only

used the tow truck to tow junk vehicles he purchased and occasionally to tow a relative or friend's car. The Taxpayer's representative interjected, stating that the Taxpayer did tow for the public but was not under contract with an auto insurer or AAA or other company. The Taxpayer then changed his story and said he did tow for the public; people did call him to tow their vehicles to a mechanic. The Taxpayer's testimony and the representative's statements are unreliable. Because the underlying mileage documentation was not sufficient and the testimony is unreliable, the mileage expenses shall remain disallowed.

Several itemized deductions were disallowed. Medical and dental expenses were disallowed as the Department determined that the expenses deducted were insurance premiums paid under a cafeteria plan, which pays the premiums with pre-tax dollars. The Department made this determination by calculating the taxable income using the dollar amount of FICA taxes withheld. The difference in gross income and taxable income calculated equaled the amount of the insurance premiums. The Taxpayer contests this calculation and states that the employer would have provided information that the plan was a cafeteria plan if it was so. However, the Taxpayers did not submit any records to support their position or evidence to disprove the accuracy of the Department's calculations. Thus, these items shall remain disallowed.

In 2015, the Taxpayer wife worked and lived in Texas for over half the year, and she continued to live there into 2016. The Taxpayers contend that the Taxpayer wife was domiciled in Texas for 2015 and that the Taxpayers intended to move to Texas permanently. However, the Taxpayers' children and Taxpayer husband lived in Huntsville during this time. The children attended school in Huntsville, and the Taxpayer husband continued operating Jeno's in Huntsville. A person's domicile is his permanent home to which he intends to return when absent. A person

domiciled in Alabama remains domiciled in the State until he abandons Alabama and establishes a new, permanent domicile elsewhere. *Whetstone v. State*, 434 So.2d 796 (Ala. 1983). The Taxpayer husband contends that he and the children spent a lot of time in Texas with his wife, including weeks during holidays, and that the family intended to move to Texas permanently. While intent to remain in a place outside of Alabama is a requirement to change domicile, it is not the only requirement. The Taxpayers must first abandon Alabama as their domicile. The Taxpayer husband stayed in Huntsville, his children attended school in Huntsville, and he had other commitments in Huntsville that he did not want to leave. The Taxpayer wife was not present at the hearing and offered no evidence of her intent. Therefore, the Taxpayers were domiciled in Alabama in 2015 and owe taxes on all taxable income.

Alabama does allow a credit for taxes paid to other states, however that credit is limited to income taxes paid. Ala. Code § 40-18-21(a)(1). Because Texas does not impose a state income tax, no credit can be allowed.

The Final Assessment for 2015 includes wage income from Little Rosie's. The parties agree that this income should be removed from the adjustments as the income belonged to the Taxpayers' son who filed his own return with the State. The Department contends that the son also claimed the personal exemption on his return, and thus the Taxpayers cannot also claim a dependent deduction for that child. The Taxpayers argued that they should be allowed the dependent deduction, but they have not met the burden of proof. The deduction is disallowed.

The Taxpayer's representative challenged the information the State received from the IRS on the basis that if the IRS had known there was other income, then it would have assessed the Taxpayers on that income. He provided documentation to show that the IRS had not made any

changes to the federal tax returns filed for the years at issue. The Department objected, stating that the assessment of the IRS is not relevant as the State assesses taxes independently of the federal government. The Department is correct.

The Taxpayers aver that because the Department has alleged failings in the Taxpayers' filings, the Department must prove their case. That is not the law in Alabama. A final assessment is prima facie correct. The burden of proof is on a taxpayer to prove that the assessment is incorrect. Ala. Code § 40-2A-7(b)(5)c. The Taxpayers have not do so.

The Revenue Department is directed to adjust the Taxpayers' liabilities in accordance with this Opinion and notify the Tax Tribunal no later than **March 20, 2020**, of the adjusted amounts due.

This Opinion and Preliminary Order is not an appealable Order. The Final Order, when entered, may be appealed to circuit court within 30 days, pursuant to Ala. Code § 40-2B-2(m).

Entered March 2, 2020.

/s/ *Leslie H. Pitman*
LESLIE H. PITMAN
Associate Tax Tribunal Judge

lhp:dr
cc: Lucky Azunda, EA
Craig A. Banks, Esq.