PEACOCK TIMBER TRANSPORT, INC. & PEACOCK TIMBER CO., INC. RR 6, Box 217A Troy, AL 36081-9645, Taxpayer, v. STATE OF ALABAMA DEPARTMENT OF REVENUE.	§ § § § § §	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION DOCKET NO. CORP. 03-1110

FINAL ORDER

The Revenue Department assessed corporate income tax against Peacock Timber Transport, Inc. for the calendar year ending December 31, 2001, and against Peacock Timber Company, Inc. for the fiscal year ending March 31, 2002. Grover T. Peacock ("Taxpayer"), who owns both corporations, appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on March 23, 2004. The Taxpayer attended the hearing. Assistant Counsel Jeff Patterson represented the Department.

The issue in this case is whether the Taxpayer's corporations should have been allowed to carryover and claim a net operating loss ("NOL") in the years in issue.

Peacock Timber Transport, Inc. incurred a loss of $191,896 in the calendar year 2000. It had net income of $140,869 in 2001. The corporation filed a 2001 Alabama return on which it reported tax due of $9,795.

Peacock Timber Company, Inc. incurred a loss of $192,462 in its fiscal year ending March 31, 2001. It had net income of $141,319 in the fiscal year ending March 31, 2002. The corporation filed a 2002 Alabama return on which it reported tax due of $9,156.

Both corporations failed to pay the tax due with the returns. The Department assessed the corporations for the reported tax due, plus applicable interest. It also assessed Peacock Timber Company, Inc. for penalties. The corporations appealed.

The Taxpayer claims his corporations both incurred net losses if their 2000 and 2001 tax years are considered together. He argues that it is unfair that the corporations should be required to pay tax on their net income in 2001, but not be able to deduct the losses incurred in 2000.[1] In pleading his case, the Taxpayer pointed out that the Alabama Taxpayers' Bill of Rights and Uniform Revenue Procedures Act should be "construed to allow substantial justice," Code of Ala. 1975, §40-2A-2(1)a., and "to provide for the fair, efficient, and complete resolution of all matters in dispute," Code of Ala. 1975, §40-2A-9(a).

Unfortunately for the Taxpayer, Act 2001-1088 amended Code of Ala. 1975, §40-18-35.1 to provide that "for a taxpayer's taxable year beginning during calendar year 2001, no deduction for any net operating loss shall be allowed or allowable." Consequently, while I agree that Act 2001-1088 causes a harsh result in this case, Alabama law is clear that the Taxpayer's corporations could not claim NOL losses for their tax years that began in the calendar year 2001. The law should be construed to allow substantial justice, if possible, but it cannot be interpreted contrary to the plain language of a statute.

The corporations may, of course, carryover the NOLs to subsequent years, assuming that they continue in business and earn profits in those years. I sympathize with the Taxpayer, but the final assessments must be affirmed.

[1] The 2001 returns filed by the corporations did not claim an NOL carryover from the prior year based on Act 2001-1088, which is discussed below.

Judgment is entered against Peacock Timber Transport, Inc. for 2001 tax and interest of $10,051.34; and against Peacock Timber Company, Inc. for the fiscal year ending March 31, 2002 tax and interest of $10,530.03. The penalty included in the final assessment against Peacock Timber Company, Inc. is waived for reasonable cause under the circumstances.

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

Entered March 29, 2004.