

TERRY W. GOSA
829 Deer Run Road
Beaverton, AL 35544,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 04-217

FINAL ORDER

The Revenue Department assessed Terry W. Gosa (“Taxpayer”) for 2001 Alabama income tax. 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 May 17, 2004. CPA Michael Nix represented the Taxpayer. Assistant Counsel Ron Bowden represented the Department.

The issue in this case is whether the Department correctly disallowed various travel-related business expenses claimed by the Taxpayer in the subject year.

The Department audited the Taxpayer’s 2001 Alabama return and requested records verifying the automobile business miles and other travel expenses claimed on the return. The Taxpayer responded that all of his records had been destroyed when his home burned in November 2001. Because the Taxpayer failed to provide substantiating records, the Department disallowed the claimed deductions and entered the final assessment in issue. The Taxpayer appealed.

The Taxpayer’s representative stated at the May 17 hearing that the Taxpayer is a supervisor with a temporary placement agency, and that he travels throughout the Southeastern United States on business. The representative, who is a CPA, stated that he has prepared the Taxpayer’s tax returns since 1999. He stated that the Taxpayer provides

him with the lump-sum amounts to be claimed, and that as a matter of practice he does not require the Taxpayer or any other client to present him with records verifying the amount claimed. Consequently, the representative could not verify that the Taxpayer had in fact maintained business-related travel records in 2001, or for any other tax year.

The issue of whether a taxpayer had adequately substantiated business-related travel and other deductions was previously addressed by the Administrative Law Division in *Fanning v. State of Alabama, Inc.* 99-395 (Admin. Law Div. 12/7/00). The Final Order in that case reads in pertinent part as follows:

The Taxpayers were required to keep adequate records from which their correct tax liability could be computed by the Department. Code of Ala. 1975, §40-2A-7(a)(1). The burden was also on the Taxpayers to provide records verifying all claimed deductions. Without such records, all deductions must be disallowed. *McDonald v. C.I.R.*, 114 F.3d 1194 (1997); *Jones v. C.I.R.*, 903 F.2d 1301 (1990); *Doyal v. C.I.R.*, 616 F.2d 1191 (1980).

All taxpayers are required to keep records to enable the Commissioner to determine their correct tax liability. Sec. 6001; *Meneguzzo v. Commissioner*, 43 T.C. 824, 831-832, 1965 WL 1240 (1965). Deductions are a matter of legislative grace, and the taxpayer bears the burden of proof to establish entitlement to any claimed deduction. Rule 142(a); *New Colonial Ice Co. v. Helvering*, 292 U.S. 435, 440, 54 S.Ct. 788, 78 L.Ed. 1348 (1934). This includes substantiation of the deductions claimed. *Hradesky v. Commissioner*, 65 T.C. 87, 90, 1975 WL 3047 (1975), *affd. per curiam* 540 F.2d 821 (5th Cir. 1976).

Hentges v. C.I.R., T.C. Memo. 1998-244 (U.S. Tax Ct., 1998).

The Taxpayers failed to provide records to verify most of the deductions claimed on their returns. The Taxpayers claim their records were destroyed by Hurricane Opal in 1995. In such cases where records are destroyed though no fault of a taxpayer, the taxpayer may reasonably reconstruct such records. *Hentges v. C.I.R.*, *supra*; §1.274-5T(c)(5), Temporary Income Tax Regs., 50 Fed.Reg. 46006, 46021-46022 (Nov. 6,

1985). In this case, however, the Taxpayers presented only personal checks, without tangible evidence that the checks were for valid business expenses. The Department is not required to rely on the Taxpayers' verbal assertions. *State v. Ludlum*, 384 So.2d 1089 (Ala.Civ.App.), cert. denied 384 So.2d 1094 (Ala. 1980). Without some evidence that the checks were for business-related expenses, the deductions must be denied.

Concerning the travel expenses, 26 U.S.C. §274(d), as amended in 1984, overruled the Cohan rule, and now requires that a taxpayer must maintain contemporaneous records of such expenses. A reconstructed estimate of expenses is not sufficient.

The substantiation requirements of section 274(d) with respect to expenses for travel away from home, meals, entertainment, and expenses relating to the use of listed property effectively preclude this Court from the use of application of the "Cohan rule," *Cohan v. Commissioner*, 39 F.2d 540, 543-544 (2d Cir. 1930), in allowing deductions for expenses where the Court is satisfied from the record that expenses have been incurred but the taxpayer has not adequately substantiated the amount of such expense. Unless the stringent substantiation requirements are met for those categories of expenses covered by section 274(d), this Court has no choice but to disallow such expenses.

Hentges v. C.I.R., supra.

Fanning at 3 – 5.

In this case, the Taxpayer's representative submitted a one page sheet allegedly documenting five trips by the Taxpayer from Mobile to Nashville, Memphis, and Huntsville. The information includes the dates (all in October 2001), the beginning and ending odometer readings, and total miles traveled. The document cannot be accepted, however, because it was not contemporaneously maintained, and also does not identify the business or person visited or the business purpose for the trip. Even if the information was accepted, as indicated, it only applies to October 2001. In short, the document is not a reasonably reliable reconstruction of the Taxpayer's 2001 travel expenses.

The final assessment is affirmed. Judgment is entered against the Taxpayer for 2001 tax, penalty, and interest of \$1,087.56. Additional interest is also due from the date of entry of the final assessment, February 10, 2004.

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

Entered May 19, 2004.