

TOMMY E. & ELEANOR N. ALLEN
9103 LOUIS DRIVE SE
HUNTSVILLE, AL 35802,

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§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers,

§

DOCKET NO. INC. 06-500

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed Tommy E. and Eleanor N. Allen (together “Taxpayers”) for 2004 Alabama income tax. The Taxpayers appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on January 18, 2007. Eleanor Allen (individually “Taxpayer”) attended the hearing. Assistant Counsel Keith Maddox represented the Department.

The Department audited the Taxpayers’ 2004 Alabama return and disallowed various Schedule A deductions. It also disallowed a \$29,413 depreciation deduction on Schedule C relating to a new SUV purchased by the Taxpayers in December 2004. The Taxpayers appealed concerning the disallowed depreciation.

The Taxpayer retired from the IRS in October 2004. In November 2004, the Taxpayer began doing independent contract/consultant work for various CPAs and attorneys in North Alabama and Southern Tennessee. She provided consulting advice on various collection related issues, and also performed research at various courthouses in Alabama and Tennessee.

The Taxpayer purchased a new SUV in late December 2004. She testified at the January 18 hearing that she immediately used the vehicle in her consulting business, and that she has only used the vehicle for work-related travel. She also stated that she

purchased the vehicle in late December because she was aware of the accelerated depreciation allowed for new SUVs pursuant to 26 U.S.C. §179, and that she wanted to take advantage of that provision in 2004.

The Department disallowed the depreciation because the Taxpayer failed to establish that she was engaged in business in 2004. Specifically, the Taxpayers failed to claim a mileage or other business expense on their 2004 return; nor did they report income from the Taxpayer's business in that year. The Taxpayer also did not obtain a business license or qualify as an enrolled agent until 2005.

The Taxpayer explained at the January 18 hearing that she incurred business-related mileage expenses in 2004, but that her husband inadvertently failed to claim the expenses when he did their 2004 return. She conceded that she should have obtained a business license in 2004, but was remiss in doing so. She also explained that the collection-related work she performed in 2004 did not require her to be licensed as an enrolled agent. Finally, she testified that while she performed services in late 2004, she did not report any income in that year because she was not paid until 2005. The Taxpayers reported business income on their 2005 return, and expect to report \$50,000 to \$60,000 in business-related income on their 2006 return.

The Department's Hearing Officer that denied the depreciation in issue is experienced and knowledgeable. It is understandable that he disallowed the depreciation based on the evidence available to him. The Taxpayer presented evidence at the January 18 hearing, however, that she began her consulting business in 2004, and that the SUV she purchased in December 2004 was placed in service in the business in that year. Consequently, the Taxpayers should be allowed the lump-sum depreciation allowed by IRC

§179, which Alabama has adopted pursuant to Code of Ala. 1975, §40-18-15(a)(21). The Taxpayers do not dispute the disallowed Schedule A deductions.

The Department is directed to recompute the Taxpayers' liability by allowing the §179 depreciation (up to the \$25,000 limit). A Final Order will then be entered.

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 Code of Ala. 1975, §40-2A-9(g).

Entered January 24, 2007.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Keith Maddox, Esq.
Tommy Allen
Tony Griggs