

DAVID & YVONNE STINSON  
2030 COUNTY ROAD 27  
TUSKEGEE, AL 36083,

Taxpayers,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 06-541

### **OPINION AND PRELIMINARY ORDER**

The Revenue Department assessed David and Yvonne Stinson (together “Taxpayers”) for 2001, 2002, and 2003 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 August 9, 2007. David Stinson (individually “Taxpayer”) attended the hearing. Assistant Counsel Gwendolyn Garner represented the Department.

The Taxpayers live in Tuskegee, Alabama. They operate a tax preparation business out of their son’s house in Opelika, Alabama. The son is currently serving in the military outside of Alabama.

The Department audited the Taxpayers for the subject years and requested records substantiating the deductions claimed on their returns. The Department disallowed the deduction the Taxpayers failed to substantiate. It also disallowed the deductions relating to their son’s house. It then entered the final assessments in issue.

The Taxpayer claimed at the August 9 hearing that he and his wife should be allowed some deductions for the expenses they paid relating to their son’s house. They claim that they used the house exclusively as their business location, and that the utilities they paid at the house should be allowed. They also argue that they paid their son’s monthly mortgage payments on the house, and that they should be allowed to deduct those

payments as rent. They issued the son a 1099 for the mortgage payments. The Taxpayer further contends that he paid two individuals to help prepare returns, and that he should be allowed to deduct those amounts per the 1099 forms he issued to the individuals.

The Department disallowed the Taxpayers' deductions relating to the house because it was their son's personal residence, not a place of business. It also claims that the Taxpayers failed to submit a Federal Form 8829, which is required to claim a home office deduction. Finally, the Department contends that the Taxpayers failed to substantiate the expenses.

The Taxpayers cannot deduct the expenses they paid relating to their son's residence as a home office because it was not their personal residence, see generally, 26 U.S.C. §280A. Rather, if allowable at all, the expenses constituted ordinary and necessary expenses incurred in carrying on a business, see generally, Code of Ala. 1975, §40-18-15(a)(1), which adopts by reference 26 U.S.C. §162.

The Department claims that the Taxpayers cannot deduct the expenses because the house is their son's residence. The evidence is undisputed, however, that they used the house as their primary business location. Ideally, they should have executed a written lease with their son indicating that they were leasing the house for their business use. But the evidence otherwise establishes that the Taxpayers used the house for business purposes and paid the related utilities, the mortgage payments, and other necessary expenses relating to the house i.e., their office.

The Taxpayers are in substance renting their son's house for use as their business location.<sup>1</sup> They should thus be allowed to deduct the rent (mortgage) payments and the utilities, provided they can verify that they paid those amounts.

The Taxpayers also claim that they paid two individuals to help them in their tax preparation business. They issued 1099s to the individuals, which they claim reflects the amounts they paid the individuals in cash.

If the Taxpayer paid the individuals for business purposes, the amounts can be deducted. However, the Taxpayers failed to present canceled checks or other evidence proving the amounts they allegedly paid the individuals. Without such supporting records, the amounts cannot be allowed.

The Taxpayers should submit to the Administrative Law Division all records and other evidence showing the amount of the expenses they paid relating to their use of their son's house as their office. The records and evidence should be submitted by September 28, 2007, and they will be forwarded to the Department for review. Appropriate action will be taken after the Department responds.

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 September 6, 2007.

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BILL THOMPSON  
Chief Administrative Law Judge

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<sup>1</sup> Because the house was being used for business purposes, and not as the son's primary residence, he was not entitled to claim the homestead exemption on the house for property tax purposes.

bt:dr

cc: Gwendolyn B. Garner, Esq.  
David Stinson  
Kim Peterson