

GREGORY BURNS  
2022 Ashley Brooks Way  
Helena, AL 35080,  
DIVISION

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§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW

Taxpayer,

§

DOCKET NO. INC. 00-616

v.

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

§

### FINAL ORDER

The Revenue Department denied a refund of 1999 income tax requested by Gregory Burns (“Taxpayer”). The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(c)(5)a. A hearing was conducted on December 20, 2000 in Birmingham, Alabama. The Taxpayer attended the hearing. Assistant Counsel David Avery represented the Department.

The Taxpayer incurred losses on his investment in stocks before 1999. The issue is whether those stock losses can be carried over as a net operating loss (“NOL”) to 1999 pursuant to Code of Ala. 1975, §40-18-15.2.

The Taxpayer claimed an NOL carry forward on his 1999 Alabama income tax return. The NOL had resulted from the Taxpayer’s stock losses in prior years. The Department denied the NOL carryover. The Taxpayer appealed.

For Alabama NOL purposes, a loss not incurred in a taxpayer’s trade or business, a nonbusiness loss, can only be claimed to offset nonbusiness income. Code of Ala. 1975, §40-18-15.2(5)c. An individual that invests in stocks is not in the trade or business of buying and selling stocks.

Consequently, any losses incurred by the investor are nonbusiness, and thus subject to the §40-18-15.2(5)c. limitation.

The Taxpayer in this case concedes that he is an investor. He also recognizes that investment losses cannot be carried forward for NOL purposes under present Alabama law. He argues, however, that the Alabama law is unfair, and that under federal law he is allowed to carry forward stock losses until they are used up. He contends that Alabama should adopt the same rules.

Alabama has adopted numerous federal income tax statutes relating to individuals. See, Code of Ala. 1975, §40-18-1.1. However, for whatever reason, the Alabama Legislature has not adopted the federal statute that allows a non-business stock loss to be carried over as a capital loss to offset future income. 26 U.S.C. §1212. The Department can only enforce the current law as written. Consequently, because the Taxpayer's loss is nonbusiness, the NOL carryover to 1999 must be disallowed.

The Department's denial of the Taxpayer's refund is affirmed.

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

Entered January 4, 2000.