

JERRY W. & GLENDA F. COVINGTON §  
226 COLLINS DRIVE  
DOUGLE SPRINGS, AL 35553-2035, §

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

Taxpayers, §

DOCKET NO. INC. 12-214

v. §

STATE OF ALABAMA §  
DEPARTMENT OF REVENUE.

### FINAL ORDER

The Revenue Department assessed Jerry and Glenda Covington (together “Taxpayers”) for 2010 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 May 10, 2012. Jerry Covington (individually “Taxpayer”) attended the hearing. Assistant Counsel David Avery represented the Department.

The Taxpayers moved from Florida to Double Springs, Alabama in 2007. They also bought 93 acres outside of Double Springs on which the Taxpayer intended to operate a horse and cattle farm.

The Taxpayer built a barn on the farm in 2007. The barn included ten stables, feed and equipment rooms, a workshop, and an inside riding area. The Taxpayer also purchased six brood mares in 2007 with the intent of breeding them. He purchased two more in 2008. He rode one of the horses one time for pleasure, but otherwise personally rode the horse only to herd the other horses.

The Taxpayer testified that he intended to buy some cattle in 2008 using money he expected to receive from the sale of a house in Florida. Unfortunately, the real estate

market tanked, and the Taxpayer was consequently never financially able to purchase the cattle.<sup>1</sup>

The United States market for horses also became depressed in 2008 due to federal government intervention in the market. Consequently, the Taxpayer was forced to give away six of his horses in 2009 and the rest in 2010 because he could not afford the upkeep. He explained that it cost more to take a horse to a sale than the horse could be sold for.

The Taxpayer lost his job as Chief Deputy Sheriff of Winston County in 2011. He thereafter spent much of his time building fences on his farm because he still hopes to one day go into the cattle business.

The Department notified the Taxpayers that it intended to audit their 2010 Alabama return. The Taxpayer contacted his accountant before the audit, and was told that he needed a business plan for his farm. The Taxpayer prepared a business plan for the farm that involved both cattle and horses. He took the plan to his accountant, who told him that he had talked to the Department examiner, and that “he’s not going to allow horses.” (T. 10).<sup>2</sup> Consequently, the Taxpayer changed his business plan the night before the scheduled audit to include cattle only.

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<sup>1</sup> The Taxpayer testified that his Florida house appraised for \$495,000 in 2007, but that he subsequently sold it for \$216,000 “to get rid of it because it was eating me alive.” (T. 13).

<sup>2</sup> The examiner testified at the May 10 hearing that he never talked to the Taxpayer’s accountant about the audit.

The Taxpayers claimed \$18,343 in Schedule F horse-related expenses on their 2010 Alabama return. The deductions included \$13,789 in depreciation, \$1,439 in supplies, \$1,052 in utilities, \$1,212 in fuel, and \$850 in feed and other expenses. The Department examiner disallowed the expenses because the Taxpayer's business plan involved cattle only. When asked why he disallowed the Schedule F expenses, the examiner testified as follows:

Mr. Goodman: Well, they gave me a plan for a cattle farm. The only horses I heard about was the six. Now, that's all the horses I remember being discussed.

ALJ Thompson: That he gave away in '09?

Mr. Goodman: That were given away. I don't remember any discussion about any other horses. I'm not saying there wasn't, but I don't remember. So since it was to be a cattle farm and we had bought and given away six horses and in the plan there was no plan for a horse farm, then as far as I was concerned, he was in the process of getting ready to cattle farm, had no income producing assets on the farm, therefore, he was in the process of getting ready to do business. I didn't tell him they wouldn't be allowed. I just said they won't be allowed until you get – until – it's like any other business, until there's something there to produce money.

(T. 20 – 21).

The evidence confirms that the Taxpayer purchased the farm for the purpose of starting and operating a horse and cattle farm. He build the barn on the farm and purchased the eight brood mares in 2007 and 2008 to further that purpose. Unfortunately, the horse market collapsed, and the Taxpayer was forced to give his horses away because he could not sell them or afford to keep them.

The Department examiner was unaware of the above facts, and thought from the Taxpayer's business plan that the Taxpayer only intended to start a cattle farm in the

future. Given that limited knowledge of the facts, it is understandable that the examiner disallowed the Schedule F expenses because he did not know that the Taxpayer had been breeding and raising horses since 2007.

The facts show that the Taxpayer intended to make a profit when he started his horse farm in 2007. Consequently, the Schedule F expenses incurred in that business should be allowed. The final assessment is accordingly voided.

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

Entered June 7, 2012.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: Lionel C. Williams, Esq.  
Jerry & Glenda Covington  
Tony Griggs