

STANFORD J. & LINDA MENDENHALL §  
1722 PIKE PARVIN ROAD  
MERIDIANVILLE, AL 35759-1700, §

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

Taxpayers,

§ DOCKET NO. INC. 13-541

v.

§

STATE OF ALABAMA §  
DEPARTMENT OF REVENUE.

### FINAL ORDER

The Revenue Department assessed Stanford and Linda Mendenhall (together “Taxpayers”) for 2009 and 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 March 13, 2014. Stanford Mendenhall (individually “Taxpayer”) attended the hearing. Assistant Counsel Christy Edwards represented the Department.

The Taxpayers submitted two Schedule Cs with their 2009 and 2010 Alabama income tax returns. One related to a legal services business, and the other involved a bed and breakfast in Camden, Alabama.

The Department allowed the expenses relating to the legal services, but disallowed the bed and breakfast expenses because it determined that the Taxpayers had not opened the bed and breakfast before the end of 2010. This appeal followed.

The Taxpayer explained at the March 13 hearing that he was born and raised in Camden. He and his wife purchased an antebellum home in Camden in 2006 with the intention of turning it into a bed and breakfast for disabled veterans. Unfortunately, the Taxpayers have to date been unable to obtain the appropriate permits or licenses from the City of Camden. Consequently, although the Taxpayers have extensively refurbished the house, they have yet to open it as a bed and breakfast.

Start-up expenses incurred in preparing to conduct a trade or business cannot be deducted until the Taxpayer actually begins conducting the business. See generally, *Goldman v. Comm. of Internal Revenue*, T.C. Memo 1990-8; *Touger v. State of Alabama*, Docket Inc. 12-1133 (O.P.O. 9/4/2013).

In short, after reviewing the record as a whole, we are unable to satisfy ourselves as to how the profit objective issue under section 183 should be resolved. Fortunately, resolution of that issue is not necessary for the disposition of this case because we have concluded that, even if the petitioner were found to have had the requisite profit objective in 1984, we would sustain respondent's alternative contention, namely, that petitioner was, during 1984, merely preparing to enter the trade or business of producing and marketing films.

Petitioner seeks to avoid the impact of respondent's alternative contention by asserting that he has already established himself in the film-making business through his prior films and that his endeavors in respect of the 50-minute documentary are simply an extension of an existing activity. But the facts of the matter are that the prior films were of a different character, that petitioner made the films during and as part of his educational development, that his efforts to turn them into profit-making activities after their initial production have been totally ineffective, and that there was a considerable lapse of time between the making of these films and the initiation of the 60-minute documentary project. In short, we conclude that petitioner has failed to carry his burden of proof that his activities during 1984 constitute anything more than preparation to go into the film-producing business. Under these circumstances, he is not entitled to a deduction under section 162 for his expenditures in respect of the film during that year. *Richmond Television Corp. v. United States*, 345 F.2d 901,907 (4th Cir. 196q), vacated per curiam on other grounds 382 U.S. 68 (1965); *Jackson v. Commissioner, supra*. Cf. *Commissioner v. Idaho Power Co.*, 418 U.S. 1, 12 (1974).

*Goldman* at 3.

In this case, the Taxpayers admittedly have not opened or operated their house in Camden as a bed and breakfast. Consequently, they could not deduct their expenses relating to the house in the subject years. As indicated above, they will be allowed to deduct the expenses when and if the business opens.

The final assessments are affirmed. Judgment is entered against the Taxpayers for 2009 and 2010 tax and interest of \$1,422.39 and \$3,110.89, respectively. Additional interest is also due from the date the final assessments were entered, May 24, 2013.

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

Entered March 18, 2014.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: Craig A. Banks, Esq.  
Stanford & Linda Mendenhall  
Brenda Lausane