

HAMPTON D. & PEGGY B. AYERS
4995 COUNTY ROAD 141
TOWN CREEK, AL 35672-4103,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers,

§

DOCKET NO. INC. 13-631

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER

This appeal involves final assessment 2009 and 2010 income tax entered against the above Taxpayers. A hearing was conducted on December 4, 2012. Hampton Ayers (individually "Taxpayer") and his attorney, Jack Burwell, attended the hearing. Assistant Counsel Keith Maddox represented the Department.

The Taxpayer was in the construction business and contracted to frame houses during the years in issue. He claimed labor expenses of \$675,500 and \$1,147,031 on his 2009 and 2010 Schedule Cs, respectively. The Department audited those returns, disallowed the labor expenses, and also made various other adjustments. The Taxpayer did not dispute the other adjustments, but argued that the labor expenses should be allowed.

During the years in issue, the Taxpayer had four crews that actually framed the houses. The crews were all Hispanic. The Taxpayer explained that in his experience, Hispanics are more reliable and better workers than any other workers. The Taxpayer further testified that he paid the crews every week in cash because the workers were undocumented, and thus would have difficulty cashing a check. He paid the crew boss the total amount earned by the crew during the week. The boss in turn distributed the money to the various crew members.

The Taxpayer kept a sheet that showed the amounts he paid the various crews each week. At the end of each year, he gave the information to his tax preparer, who used the sheets to compute the Taxpayer's contract labor deduction in each year. The Taxpayer also prepared 1099s in the name of each crew boss showing the total amount paid to each crew during the subject years.

On audit, the Department disallowed the contract labor because the 1099s appeared to be fraudulent. The Department's Answer explains as follows:

During the course of the audit, the Taxpayers provided Form 1099s to the Department concerning the contract labor reported on the Schedules C. The forms listed the Taxpayers' FEIN as 43-2091116. However, the Taxpayers do not have a FEIN for their Schedule C business. The social security numbers for employees as listed on the forms were falsified. The numbers did not match the Taxpayer's employees. Some of the numbers belonged to individuals living in other states and some of the numbers were completely invalid. Due to the fact that the Form 1099s were falsified, the Department disallowed the labor expenses on both returns.

The Taxpayer testified that he had a FEIN during the subject years, and offered to submit it at the December 4 hearing. He further explained that he simply failed to put the correct FEIN on some of the 1099s. He also stated that he used the social security numbers that were given to him by his crew bosses, and that he did not intentionally falsify the 1099s.

The Department attorney suggested at the December 4 hearing that the Taxpayer should provide notarized affidavits from his crew bosses in the subject years verifying that their crews were paid by the Taxpayer in those years. The Taxpayer submitted some affidavits. A copy of the Department's response is enclosed with the Taxpayers' copy of this Order.

The Department indicates that the names and social security numbers on the affidavits do not match. It has also been unable to verify the identities of those individuals, and consequently, that the affidavits do not rise to the level of proof necessary to claim the labor expenses.

A final assessment is prima facie correct. The burden of proof is on a taxpayer to prove that the assessment is incorrect. Code of Ala. 1975, §40-2A-7(b)(5)c. I have carefully reviewed the evidence in this case and must agree that the Taxpayer has failed to present credible evidence that the assessments are incorrect. The Taxpayer was a credible witness, but Alabama law requires sufficient documentary evidence in support of a claimed deduction. There is no such evidence in this case.

The final assessments are affirmed. Judgment is entered against the Taxpayers for 2009 and 2010 tax, penalties, and interest of \$36,667.15 and \$63,983.17, respectively. Additional interest is also due from the date the final assessments were entered, June 19, 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.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Keith Maddox, Esq.
Jackson P. Burwell, Esq. (w/enc.)
Brenda Lausane