

**ALABAMA TAX TRIBUNAL**

ROBERT E. & BARBARA SCHULER, §  
Taxpayers, § DOCKET NO. INC. 20-224-JP  
v. §  
STATE OF ALABAMA §  
DEPARTMENT OF REVENUE.

**OPINION AND FINAL ORDER**

This appeal involves the partial denial by the Alabama Department of Revenue of the Taxpayers’ request for a 2017 income tax refund. A trial was held on April 3, 2023. Robert Schuler appeared and testified. Bart Boothe also testified for the Taxpayer. Margaret McNeill represented the Revenue Department, and Tina Smith, the Revenue Department’s reviewing auditor, appeared and testified.

Facts

In 2006, Mr. Schuler purchased three retail buildings as investments, with one of the buildings being located in the City of Elba, Alabama. In 2017, Mr. Schuler transferred the Elba property to the City of Elba and claimed a loss relating to that property on Schedule D of his and his wife’s 2017 Alabama individual income tax return. Mr. Schuler stated in his Notice of Appeal to the Tax Tribunal that the property was sold to the City of Elba and that the sales proceeds were then donated to the city.

Based on a review of records and conversations with city personnel, the Revenue Department took the position that the property was donated to the city and

that no sale occurred. Therefore, the Revenue Department allowed the Taxpayers a deduction for a charitable contribution on Schedule A, as well as a Schedule D loss for unamortized goodwill. The result was a reduction in the refund claimed by the Taxpayers on their 2017 return. The Taxpayers ask that the refund be restored to the original amount requested.

During the trial, Mr. Schuler testified that no money changed hands in the transaction involving the property and the city. Mr. Boothe, the attorney for Elba, confirmed that no money changed hands.

Subsequently on May 2, 2023, Mr. Schuler submitted a letter to the Tax Tribunal stating that the transaction constituted a “bargain sale,” which he stated “occurs whenever a taxpayer sells property to a tax exempt entity for **less** than its Fair Market Value.” (emphasis in original) He further stated that

[t]he proper tax treatment of a bargain sale of real estate such as the Elba site is an ordinary deduction for the full appraised Fair Market Value of the site, since the City did **not** pay any consideration to me. Under IRC Section 1001, the loss was properly reported as the excess of the **adjusted basis** (approximately \$260,961, altogether) over the **amount realized** (in this instance, zero). The charitable deduction is roughly \$39,360, while the loss is approximately \$221,601.

(emphases in original)

By letter dated May 26, 2023, the Revenue Department agreed that the transaction constituted a “bargain sale” and that the Taxpayers were entitled to a charitable-contribution deduction as the Revenue Department had allowed. However, the Revenue Department argued that the Taxpayers’ claim of a loss was prohibited by IRS Publication 544, which states:

If you sell or exchange property for less than fair market value with the intent of making a gift, the transaction is partly a sale or exchange and partly a gift. You have a gain if the amount realized is more than your adjusted basis in the property. However, you do not have a loss if the amount realized is less than the adjusted basis of the property.

Mr. Schuler responded by stating his intention to “correct and amend the record in two respects:” First, he stated that he did not claim a charitable deduction for the Elba transaction or file IRS Form 8283. Instead, he reiterated his contention that the listing of the transaction on Schedule D and Form 4797 as a loss resulting from a sale or exchange was correct. He stated: “The fact that the grantee was the City of Elba, a municipality, had no bearing on my treatment of the sale. The City’s status was pure happenstance, and the quoted language from [the Revenue Department’s attorney] concerning bargain sales is not applicable.” Second, Mr. Schuler stated:

I need to clarify my testimony during the hearing on April 3, 2023. I said then that money did not change hands. As you know consideration in a contract can take many forms. In this case, there were two parts to the contract. The first part was that we agreed to obtain an appraisal on the property and that the City of Elba would pay for said appraisal.... This note also has the amount of \$1,200, which was the amount the City of Elba paid for the Appraisal. This was the consideration (money changing hands) in this contract.

#### Analysis

The parties agree that the transaction in issue was a bargain sale. And, as referenced by the Taxpayers, the provisions of 26 U.S.C. § 1001 – and any related sections or rules – determine gain or loss on the sale or other disposition of property. IRC § 1001(a) states:

The gain from the sale or other disposition of property shall be the excess

of the amount realized therefrom over the adjusted basis provided in section 1011 for determining gain, and the loss shall be the excess of the adjusted basis provided in such section for determining loss over the amount realized.

As quoted, IRC § 1001(a) addresses the computation of a gain and the computation of a loss. And IRC § 1011, which is referenced in IRC § 1001(a), states generally that “[t]he adjusted basis for determining the gain or loss from the sale or other disposition of property, ... shall be the basis..., adjusted as provided in section 1016.” However, IRC § 1011(b), which is titled “Bargain sale to a charitable organization,” addresses only the adjusted basis for determining the gain from such a sale. Noticeably missing is a discussion of determining a loss from a bargain sale. Section 1011(b) states the following:

If a deduction is allowable under section 170 (relating to charitable contributions) by reason of a sale, then the adjusted basis for determining the gain from such sale shall be that portion of the adjusted basis which bears the same ratio to the adjusted basis as the amount realized bears to the fair market value of the property.

Further, Treasury Regulation § 1.1001-1(e)(1), which addresses the computation of gain or loss, states as follows:

Where a transfer of property is in part a sale and in part a gift, the transferor has a gain to the extent that the amount realized by him exceeds his adjusted basis in the property. **However, no loss is sustained on such a transfer if the amount realized is less than the adjusted basis.**

(emphasis added). *See also* Treasury Regulation § 1.1011-2(a)(1) & (b), entitled “Bargain sale to a charitable organization,” both subparagraphs of which address the computing of a taxpayer’s adjusted basis of property “for purposes of determining gain,” with no mention of determining loss. As shown, the relevant statutory and

regulatory provisions did not allow the loss in issue here.

Conclusion

“Concerning [a] refund petition, the burden is on a taxpayer to prove that a refund is due.” *Game Day Tents, Inc.*, Docket No. S. 17-358-JP, Ala. Tax Tribunal (April 12, 2023) (quoting *The Package Store #1, Inc., and The Package Store #2, Inc. v. Alabama Department of Revenue*, Docket No. S. 87-183, Admin. Law Div. (January 26, 1993)). Because the Taxpayers in this case have not met their burden of showing that the Revenue Department erred in partially denying their request for a refund, the Revenue Department’s partial denial of the refund request is upheld. Judgment is entered accordingly.

This Opinion and Final Order may be appealed to circuit court within 30 days, pursuant to Ala. Code 1975 § 40-2B-2(m).

Entered October 5, 2023.

*/s/ Jeff Patterson*

JEFF PATTERSON

Chief Judge

Alabama Tax Tribunal

jp:ac

cc: Robert E. Schuler  
Margaret McNeill, Esq.