

ALABAMA TAX TRIBUNAL

JOSEPH V. & PAMELA N. PRICE,	§	
Taxpayer,	§	DOCKET NO. INC. 25-0572-RC
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

OPINION AND PRELIMINARY ORDER

This appeal involves the entry by the Alabama Department of Revenue of a final assessment of income tax for 2014. The Tax Tribunal conducted a hearing on May 19, 2026. Margaret Johnson McNeill, Esq., represented the Department, and Pamela Blocton, a Revenue Examiner III with the Department, appeared and testified. The Taxpayers, Joseph V. Price, Esq., and Pamela N. Price appeared and testified, representing themselves.

The Taxpayers initially did not file an Alabama income tax return for the year 2014. The Department notified the Taxpayers by letter in August of 2017 that it had not received their 2014 return, and that it had received information showing the Taxpayers earned income that would have sufficed to require them to file such a return. Having no response, the Department estimated the Taxpayers' liability from the most accurate and complete information reasonably obtainable, as provided by Ala. Code (1975)¹, § 40-2A-7(b)(1)a. The Department entered its final assessment for the year 2014 on August 13, 2025. The Department has not provided an explanation for the

¹ Unless otherwise specified, all references herein to sections or section numbers are to the CODE

unusually long time between its initial correspondence and the final assessment. That assessment was in the amount \$9,451.34, consisting of tax of \$5,078.00, pre-final assessment interest of \$2,596.04, a late filing penalty of \$507.80, and a late payment penalty of \$1,269.50. The Taxpayers appealed that final assessment to this Tribunal. Their appeal was timely.

The Taxpayers did eventually file a joint 2014 Alabama income tax return, in October of 2025. That return, as filed, disclosed a taxable loss of \$28,991, and requested no refund as no Alabama income taxes had been paid or withheld. Through a series of preliminary orders, the Taxpayers produced additional documentation. The Department agreed to allow some deductions it had previously denied relating to the Department's estimated return, namely home mortgage interest and gifts to charity. However, it refused to accept the Taxpayers' proffered 2014 return because (1) the cost basis of the properties sold had not been verified; and (2) the amount of gambling losses claimed did not match the amount of losses shown on win/loss statements from a casino where the Taxpayers had gambled.

There are two issues before the Tribunal. The first is the Department's disallowance of a claimed loss of \$22,650.00 from the sale of two parcels of real property. The second is the Department's disallowance of gambling loss expense of \$35,318.00.

I. LOSSES FROM THE SALE OF PROPERTY.

The first such issue is the more straightforward one. On their 2014 return, the

Taxpayers reported the sale of two parcels of real property. The first, “Lot 7 in Saugahatchee subdivision,” had been purchased in 2007 for \$61,000.00 and had been sold in 2014 for \$27,000.00, a loss of \$34,000.00. The second parcel, “18 acres in Elmore County,” they purchased in 2008 for \$26,000.00, and sold in 2014 for \$37,350.00, a gain of \$11,350.00. Thus, the two sales combined netted a loss of \$22,650.00, which the Taxpayers reported on Part I, line 3 of their 2014 return.

The Department insists that it had no verification of the amount the Taxpayers paid for these properties, and thus it disallowed the adjusted basis the Taxpayers claimed. Further, even if the Taxpayers had properly documented their basis, the Department’s position is that the properties were for the personal use of the Taxpayers, and therefore no deduction is allowed for sales at a loss.

A. THE QUESTION OF BASIS.

Regarding basis, the Taxpayers respond that the amounts they paid for these properties are plain from the face of the deeds by which they acquired them. This is so, they claim, because in both cases, the recording tax paid by the Taxpayers (and stamped on the face of the deed) is a certain and set percentage of the purchase price. The Taxpayers state, and the Department does not deny, that the rate of recording tax charged by the Probate Judge of Lee County, Alabama, is (or at least was, in 2007) \$1.00 per \$1,000.00 of value. Page 3 of the deed for the parcel identified as the Saugahatchee subdivision property shows that the Taxpayers paid a recording tax of \$61.00. This would comport with a purchase price of \$61,000.00, as the Taxpayers

claim. The Taxpayers have not produced a copy of the deed for the parcel identified as 18 acres in Elmore County. The undersigned searched for a deed online, but publicly available Elmore County real estate records only go back as far as 2019, it appears.

The Department at one point advanced the argument that the adjusted basis for the Saugahatchee subdivision property should have been \$1.00, because the deed recites that it is “in consideration of One and 00/100 (\$1.00) Dollar and other good and valuable consideration....” The Tribunal takes judicial notice that this or similar language is commonly used in real property deeds in Alabama whatever the purchase price might have been, and in cases where there was no consideration at all. This recitation is purely formulaic and cannot serve as reliable evidence the Department may use to establish the purchase price of real property. While it would have been ideal had the Taxpayers been able to produce a canceled check or other evidence of actual payment, considering the time that has elapsed since the purchase it is understandable that the Taxpayers do not have such evidence. Between the deed, the purchase contract (also for \$61,000.00), and the testimony of the Taxpayers, I am convinced that the Taxpayers did, indeed, pay \$61,000 for that parcel in 2007, and that their sale of it 7 years later for \$27,000.00 did create a loss of \$34,000.00.

Similar logic would apply to the sale of the second parcel the Taxpayers identified. The Taxpayers will be directed in the summation of this order to produce a filed, stamped copy of the deed by which they acquired the 18 acres in Elmore County within a reasonable time, and presuming that they do so, the Department should

likewise infer the purchase price of their property from the recording tax paid at the time of purchase in 2008.

B. DEDUCTIBILITY OF LOSSES ON SALE OF PROPERTIES

Having gone some way toward answering the question of basis, we now turn to the tax effect, if any, of the Taxpayers having sold these parcels at an overall loss. During the hearing, the Taxpayer Mr. Price quoted § 40-18-8(a), stating “[e]xcept as provided in this section, upon the sale or exchange of property, the entire amount of the gain or loss determined under Section 40-18-7 shall be recognized.” While the Taxpayer’s quotation of the statute is accurate, his conclusion is in error. This is because deductions available to individual taxpayers are provided by § 40-18-15. That section explicitly adopts the framework of Internal Revenue Code (IRC) § 165 and in particular the limitation on losses of individuals provided by IRC § 165(c). Section 165(c) allows losses on an individual’s sale of property in three circumstances: “(1) losses incurred in a trade or business; (2) losses incurred in any transaction entered into for profit, though not connected with a trade or business; and (3) except as provided by subsection (h), losses of property not connected with a trade or business or a transaction entered into for profit, if such losses arise from fire, storm, shipwreck, or other casualty, or from theft.”

When asked by the undersigned during the hearing the purpose of the Taxpayers’ purchase of these parcels, the Taxpayers responded in both instances that the properties were purchased for building the Taxpayers’ home (although their plans

in this regard never came to fruition). Neither property was purchased as part of a trade or business, or to be held for investment. Nor did the Taxpayers at some later time convert either property to become income-producing property. The dramatic diminution in value of the Saugahatchee subdivision parcel was explained to be the result of the failure of the subdivision's creator to finish the construction of streets, gutters, lights, and other infrastructure necessary to support the building of homes, and the creator's subsequent abandonment of the project.

While I sympathize with the Taxpayers in suffering this loss due to someone else's actions, that does not exempt the property from being in the category of "personal use property." There is no provision for the deduction of a loss relating to property held for personal use, such as to build a home, in IRC § 165 or elsewhere, and thus no provision for its deduction under § 40-18-15. Rather, the loss the Taxpayers suffered would be described by § 40-18-17, stating "no deduction shall in any case be allowed in respect of personal, living, or family expense...." This is confirmed more explicitly by Treas. Reg. § 1.165-9(a), stating "[a] loss sustained on the sale of residential property purchased or constructed by the taxpayer for use as his personal residence and so used by him up to the time of the sale is not deductible under section 165(a)."

Furthermore, the results of these two sales may not be netted together as the Taxpayers attempted to do on their return, for the very reason that the loss on the Saugahatchee subdivision property is not deductible. Not only may that loss not be used to offset other ordinary income recognized by the Taxpayers, it also may not offset

the gain realized on the other personal use property, the 18 acres in Elmore County. The question of whether a loss on the sale of one personal use property may be used to offset a gain on the sale of another personal use property in the same tax year was answered directly by the case Koehn v. Commissioner, 16 T.C. 1378 (1951), in the negative. The U.S. Tax Court stated:

Loss from the sale of petitioner's personal residence does not constitute a long term capital loss nor a deductible loss under any provision of the Code. Section 23(e) [the predecessor of IRC § 165(c)] distinctly provides for the deduction of losses only 'if incurred in trade or business,' or 'in any transaction entered into for profit, though not connected with the trade or business,' or arising 'from fires, storms, shipwreck, or other casualty, or from theft.' Petitioner's loss from the sale of his St. Louis residence does not qualify under any of those provisions. Moreover, Regulations 111, section 29.23(3)-1 [the predecessor to Treas. Reg. § 1-165-9(a)], specifically states that 'A loss on the sale of residential property purchased or constructed by the taxpayer or his as his personal residence and so used by him up to the time of the sale is not deductible.' Finally, section 24(a)(1) [the predecessor of IRC § 262(a)] provides that in computing net income no deduction shall in any case be allowed in respect of personal, living, or family expenses.

Petitioner, however, maintains that he has no loss from sales of personal residences but that he has a gain from such sales and that section 23 is not applicable unless the transactions result in a loss. This reasoning we must reject. *The two sales were separate transactions and the question of statutory gain or loss must be considered separately as to each transaction. Morris Investment Corporation*, 5 T.C. 583, *aff'd* (C.A. 3, 1946), 156 F.2d 748, *certiorari denied*, 329 U.S. 788.... [I]t is perfectly plain that in authorizing losses to offset gains, the Commissioner means only those losses which are recognized as deductions by the statute.

Koehn, *supra*, at 1380-81 (emphasis added). Consequently, when the Department determines the adjusted basis of the 18 acres in Elmore County, that basis should be deducted from the selling price and the difference will be taxable income, unreduced by the loss suffered on the Saugahatchee subdivision property.

II. GAMBLING LOSSES.

The Taxpayers' 2014 return reported on part I line 8 "Other income" of \$35,318, which was labeled "Gambling Winnings Poarch C," presumably meaning Poarch Creek, the tribe that owns and operates the Wind Creek Casino in Wetumpka, Alabama. The Department received from the IRS copies of Form W-2G that two casinos had prepared for the Taxpayers in 2014. Gambling establishments are required to file Form W-2G with the IRS whenever a gambler wins \$1,200.00 or more from bingo or slot machines, \$5,000.00 or more from poker, \$1,500 from keno, or any amount subject to income tax withholding. These reporting thresholds were the same in 2014.² These forms are produced for each such win, and reflect the amount of gross winnings, unreduced by losses the gambler may have suffered.

The Taxpayers assert that they always used a loyalty card when placing bets at the casino, because the casino would provide certain benefits and perks based on their betting activity. Thus, they state, the casino has an accurate record of all their betting results, both positive and negative. To that end, the Taxpayers have produced two win/loss statements from the Poarch Creek Casino (the former name of Wind Creek) for 2014, one for each of them. Those statements indicate that on a net basis, Mr. Price won \$404.43, and Ms. Price lost \$11,475.14, for a combined loss of \$11,070.71. These are net numbers for the entire year. Further details are provided on a month-by-month basis, but that is where the details stop. There is no record of the Taxpayers' activity at the casino on a per-bet basis that would conclusively show both the amounts the

Taxpayers won and the amounts that they lost. Even assuming the casino had such records at one time (and it must have had, to produce the win/loss statements themselves), the length of time elapsed since 2014 makes it very unlikely such data can be recreated now for the purposes of this present appeal.

At the hearing, Ms. Blocton stated that the Department would be willing to allow the Taxpayers' gambling loss against their gambling income to the extent of the \$11,070.71 shown by the win/loss statements. Indeed, this Tribunal's predecessor approved exactly that sort of treatment in the case Thomas P. & Marie Redmond v. Alabama Dep't of Rev., Ala. Dep't of Rev. Admin. L. Div., dkt. no. INC. 2003-183, 2003 WL 21953359 (June 26, 2003). In that case, the taxpayers produced similar win/loss statements from two casinos in Mississippi. At one, the Taxpayers had a net loss of \$7,705.00. The W-2Gs reported by that casino totaled \$12,708.00. Viewing these facts, the Administrative Law Division stated "[t]hat documentation, supported by the Taxpayer's credible testimony at the June 9 hearing, is sufficient to allow that amount as a deduction against the gambling income received in the subject year."

While I hesitate to disagree with my august predecessor Judge Bill Thompson, this methodology is in error. The error occurs because the income figure used by the Department is gross income, whereas the loss figure supplied by the casino is a net loss. If the taxpayer in Redmond won \$12,708.00, but for the entire year lost \$7,705.00, the logical result must be that that taxpayer lost \$7,705.00 *more than* he won.

A clarifying example may aid in understanding. Let us assume that a gambler

² See <https://www.irs.gov/pub/irs-prior/iw2g--2014.pdf> (last visited May 26, 2026).

goes to a casino on a Tuesday and has very good luck playing poker, winning \$20,000.00. Then, that same gambler, feeling that his luck must be good, returns to that casino on the following Thursday, where he again plays poker and manages to lose \$30,000.00. Having learned his lesson, the gambler refrains from any further casino gambling for the remainder of the year. The casino, following federal regulations, will issue that gambler a Form W-2G, showing that he won \$20,000.00. The casino will forward that information to the IRS and to the gambler. The casino provides no contemporaneous documentation of the \$30,000.00 loss because there is no requirement that it do so. The gambler, at the end of the year, secures a win/loss statement from the casino, showing a net \$10,000.00 loss (his \$20,000.00 win less his \$30,000.00 loss).

Following the methodology proposed by the Department and adopted by the Redmond case, the IRS (and the Department) would conclude that the gambler had net gambling income of \$10,000.00 (the \$20,000.00 gross win minus the \$10,000 net loss), when in fact the gambler had a net loss of \$10,000.00.

In this case, the Taxpayers' basic point is that if together they won \$35,318, and the casino states that they lost \$11,070.71 overall for the year, then logically they must have lost \$11,070.71 *more than* they won; in effect, that they must have lost \$46,388.71 for the math to turn out correctly. But because gambling losses may only be used against gambling winnings, they deducted the maximum amount deductible, which was \$35,318.00, leaving them with no net gambling income for 2014.

This is an attractive argument as a purely logical exercise. However, there are practical impediments in this case that prevent the Tribunal from immediately agreeing with the Taxpayers' position. For one, the 10 Forms W-2G the Department received report \$33,318.00 in gambling winnings from two different casinos (Wind Creek, as mentioned above, and the Beau Rivage in Biloxi, Mississippi). This is exactly \$2,000.00 less than the \$35,318.00 reported by the Taxpayers. One point the Department made is that any winnings less than \$1,200.00 would not have generated a Form W-2G, and thus the Taxpayers may have had more (perhaps significantly more) income than the amount listed on the return. In the win/loss statements provided by the Taxpayers, gambling activity is reported in the months of January, February, May, June, July, and August of 2014 for Mr. Price, and the months of March, June, July, August, September, and October of 2014 for Ms. Price. While there was no testimony regarding how often the Taxpayers went to the casino, it must have been at least once per month in each of these months. In fact, it is likely to have been more than once per month, because no months on the win/loss statement have a win total excepting (1) June of 2014 when Mr. Price won, on a net basis, \$14,955.27, a figure that does not match any total on any one W-2G; and (2) September of 2014 when Ms. Price won, on a net basis, \$243.64, an amount that not only does not match her one W-2G from Wind Creek but also would have failed to trigger a W-2G by itself in any event. The other 5 months for each Taxpayer show net losses of varying amounts.

What is the likelihood that in all those visits the Taxpayers won only (and

exactly) \$2,000.00 in wins smaller than \$1,200.00? The Department would have been within its rights to answer that question with an estimate, as it did in the case Arthurine Dowdell v. State of Alabama Dep't of Rev., Ala. Dep't of Rev., Admin. L. Div., dkt. no. INC. 2003-375 (Aug. 26, 2003), 2003 WL 22535619. Indeed, that case, in language repeated in several other gambling-related cases, laid out the framework for judging evidence in such cases.

Gambling losses can be deducted, but only up to the amount of gambling winnings Code of Ala. 1975, § 40-18-15(7) and Dept. Reg. 810-3-17-.01(1)(a)(12). See also, 26 U.S.C. § 165(d). The burden is on the taxpayer to prove gambling losses. Betson v. Commissioner, 802 F.2d 365 (9th Cir. 1986). In Scarborough v. State of Alabama, [INC.] 01-178 (Admin. Law Div. 8/26/02), the Administrative Law Division held as follows:

As with all deductions, the burden is on the taxpayer to prove gambling losses. Donovan v. Commissioner, 359 F.2d 64 (1966); Betson v. Commissioner, [*supra*]. Whether a taxpayer has adequately established his gambling losses is a question of fact in each case. As stated in Norgaard v. Commissioner, 939 F.2d 874, 878 (9th Cir. 1991): The question of the amount of losses sustained by a taxpayer is a question of fact to be determined from the facts of each case, established by the taxpayer's evidence, and the credibility of the taxpayer and supporting witnesses. Green v. Commissioner, 66 T.C. 538, 545-46 (1976) *acq.* 1980-2 C.B. 1. The credibility of the taxpayer is a crucial factor. See Mack v. Commissioner, 429 F.2d 182, 184 (6th Cir. 1970) (that the tax court allowed some deduction based on the taxpayer's net worth method of proof "was a testament to the persuasiveness and seeming integrity of these taxpayers."). In some cases, courts have found losing tickets or other records and corroborating testimony by the taxpayer insufficient to establish that the taxpayer suffered deductible losses. However, in other cases, the tax court has allowed the taxpayer to deduct some or all of their losses on the basis of their losing tickets and credible corroboration by the taxpayer.

Dowdell, *supra*, at *1. In particular, the Administrative Law Division seemed to have difficulty accepting losing racetrack tickets, because "[l]osing tickets are discarded after

every race and it would be a simple matter to collect enough tickets discarded by other bettors to support any amount of claimed losses. The Department should not be required to accept such unreliable evidence. Rather, a taxpayer should be required to produce contemporaneous records showing races attended and the amounts won and lost on specific races (racing programs, tip sheets, log books, etc.)” State of Alabama Dep’t of Rev. v. Shirley A. Givens Johnson, Ala. Dep’t of Rev. Admin. L. Div., dkt. no. INC. 90-126 (Jan 3, 1991), 1991 WL 80353, at *1.

Ideally, what records should the Taxpayers have kept? According to the I.R.S., taxpayers who wish to ensure the deductibility of their losses should:

keep an accurate diary or similar record of your losses and winnings.

Your diary should contain at least the following information.

- The date and type of your specific wager or wagering activity.
- The name and address or location of the gambling establishment.
- The names of other persons present with you at the gambling establishment.
- The amount(s) you won or lost.

In addition to your diary, you should also have other documentation. You can generally prove your winnings and losses through Form W-2G, Certain Gambling Winnings; Form 5754, Statement by Person(s) Receiving Gambling Winnings; wagering tickets; canceled checks; substitute checks; credit records; bank withdrawals; and statements of actual winnings or payment slips provided to you by the gambling establishment.

IRS Publication 529 (Rev. 12/2020), Miscellaneous Deductions, at 10 (emphasis added).

The Publication goes on to list specific types of documentation relating to particular forms of betting (keno, slot machines, table games, etc.).

What the Taxpayers have provided in this case is a middling level of evidence.

Their win/loss statements are much better and more reliable than losing racetrack slips perhaps picked up off the ground at a racing track. By themselves, they are not as persuasive as a diary as described in IRS Publication 529.³ As recited in the cases cited previously, in this situation the credibility of the Taxpayers is critical.

As stated above, the Department could have estimated the Taxpayers' gambling winnings to have been higher than reported; it did not do so and instead accepted the Taxpayers' self-reported figure of their combined W-2G winnings plus \$2,000.00 extra. Likewise, the Department could have challenged the correctness⁴ or even the authenticity of the casino win/loss statements. It failed to do so and given the general credibility of the Taxpayers in-person testimony, the Tribunal credits the win/loss statements as both accurate and authentic.

I find that the Taxpayers testimony was credible, and I believe that they intended to testify accurately and truthfully, even if they may have been mistaken on some issues (such as the deductibility of their losses on the land sales). Having no reason to believe that the win/loss statements are either inaccurate or inauthentic, I also credit the facts shown in them relating to the Taxpayers' gambling activities in 2014 at the Wind Creek Casino. Judge Thompson, in similar circumstances, allowed

³ Although even had the Taxpayers kept such a diary, query whether they would still have had it, or known where it was, almost a decade after the fact.

⁴ The Department does note that the win/loss statements bear the following disclaimer: “[t]he casino is not responsible for the accuracy of this estimate. Ask your tax advisor if you have questions about deducting gaming losses on your tax return.” The Tribunal believes this disclaimer considers the fact that the gambler may have unreported gambling winnings or losses if (for example) the gambler failed to use his or her loyalty card, not that the figures in the statement are themselves inaccurate. Casinos are not known for failing to closely attend to their money.

gambling losses backed by similar evidence and testimony, even though I believe his methodology to have been in error.

Consequently, I find that the Taxpayers had gambling losses in 2014 of at least \$46,388.71, which is more than sufficient to offset their gambling income of \$35,318.00. Consequently, their deduction is limited to that same amount, which is the amount they reported on their tax return.

III. CONCLUSION

The **Taxpayers** are directed to acquire and turn over to the Tribunal a filed, stamped copy of the deed by which they acquired ownership of the Elmore County property in 2008. They should provide a copy of this deed to both the Tribunal and to the Department's Counsel by **Thursday, July 9, 2026**.

The **Department** is directed, within 30 days of receiving a copy of the deed referred to in the preceding paragraph, to recalculate the Taxpayers' 2014 liability, by (A) allowing for the proper adjusted bases in the properties sold by the Taxpayers; (B) disallowing the loss suffered as the result of selling the Saugahatchee subdivision parcel; (C) recognizing the gain, if any, on the sale of the Taxpayers' 18 acres in Elmore County; and, (D) allowing the deduction claimed by the Taxpayers for gambling losses. The Department is directed to provide the result of that recalculation to both the Tribunal and the Taxpayers. Appropriate action will then be taken.

This Opinion and Preliminary Order is not an appealable Order. The Final Order, when entered, may be appealed to circuit court within 30 days pursuant to §40-

2B-2(m).

Entered June 9, 2026.

/s/ Ralph M. Clements, III
RALPH M. CLEMENTS, III
Associate Judge
Alabama Tax Tribunal

cc: Joseph V. & Pamela N. Price
Margaret Johnson McNeill, Esq.