

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

§

§

v.

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TERRY & ELENDA G. TURNER
Route 1
Glenwood, AL 36034,

§

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Taxpayers.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 90-248

FINAL ORDER

The Revenue Department assessed income tax against Terry and Elenda G. Turner (Taxpayers) for 1986. The Taxpayers appealed to the Administrative Law Division and a hearing was conducted on June 4, 1991. CPA Jerry W. Carden appeared for the Taxpayers. Assistant counsel Dan Schmaeling represented the Department. This Final Order is based on the evidence presented at the hearing.

FINDINGS OF FACT

Elenda Turner (Taxpayer) and her husband Herman Sanders filed joint Alabama income tax returns and reported losses from their farming business for the years 1977 through 1981. Herman Sanders was killed in a farming accident in 1981.

The Taxpayer continued farming and reported taxable income in 1982, primarily from the sale of some of the farm equipment. The Taxpayer offset her 1982 income by carrying forward the NOLS from the prior years. The Department reviewed the return, adjusted the Taxpayer's NOL computation, and sent the Taxpayer a letter indicating her correct 1982 liability and also the remaining NOL carryover available for later years.

The Taxpayer continued farming and reported operating losses in 1983, 1984 and 1985. The Taxpayer married Terry Turner in 1985 and the couple quit farming and sold the remaining farm equipment in 1986. The Taxpayers carried forward the 1983, 1984 and 1985 NOLs to offset the income realized in 1986.

The Department reviewed the 1986 return and reduced the NOL carryover from prior years. Specifically, the Department recomputed the NOL carrybacks and carryovers for the entire period 1977 through 1986 and allowed only one-half of the pre-1982 losses to be carried forward to 1982. The remaining pre-1982 losses attributable to Herman Sanders were disallowed. As a result, the pre-1982 losses no longer fully negated the 1982 taxable income, which required that some of the 1983, 1984 and 1985 operating losses had to be carried back to 1982. Consequently, the losses available for carryover to 1986 were reduced, which resulted in additional taxable income in 1986. The preliminary assessment in issue is based on the above adjustments. Department Exhibit 1 showing the Department's treatment of the NOL carrybacks and carryovers from 1977 through 1986 is attached.

The Taxpayers do not dispute the technical accuracy of the Department's adjustments. Rather, the Taxpayers contend that the Department's actions constitute an unauthorized reexamination of the 1982 return which is prohibited by Code of Ala. 1975, §40-18-56. The Taxpayers also argue that the Department cannot "reopen"

the 1982 tax year because of the three-year statute of limitations set out at Code of Ala. 1975, §40-18-45.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-18-56 provides in part that "[N]o taxpayer shall be subjected to unnecessary examination or inspection, and only one inspection of a taxpayer's books or accounts shall be made for a taxable year" In this case the Department has not unnecessarily reexamined the Taxpayer's records for 1982. Rather, the Department was required to review the Taxpayer's losses going back to 1977 so as to properly compute the NOL carryover available in 1986. In other words, the Department had to review 1982 in order to properly compute the Taxpayers' liability for 1986. The examination was necessary and did not violate §40-18-56.

Section 40-18-45 is not a bar to the present assessment because the Department has not assessed additional tax for 1982.

The Department is not prohibited from auditing a tax year barred by the statute of limitations for the purpose of determining the taxpayer's liability for a current year that is open to assessment.

The Department's initial adjustments involving the Taxpayer's 1982 NOL were incorrect. The Department has now corrected it; mistake and should not be prevented from applying the correct calculations in computing the Taxpayers' liability for 1986. The Department cannot because of prior erroneous calculations be

estopped from assessing and collecting the correct amount of tax due. State v. Maddox Tractor & Equipment Company, 69 So.2d 426.

The above considered, the Department is directed to make the preliminary assessment in issue final, with applicable interest.

Entered on July 24, 1991.

BILL THOMPSON
Chief Administrative Law Judge