

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. INC. 91-178

ROGER C. & PHYLLIS E. HANNAH §
7 South Forty Road
Alabaster, Alabama 35007, §

Taxpayers. §

FINAL ORDER

Roger C. and Phyllis Hannah (Taxpayers) suffered a net operating loss in 1990 and attempted to carry the loss back to 1987 and 1988. The Department disallowed the carrybacks and the Taxpayers appealed to the Administrative Law Division. A hearing was conducted on September 25, 1991. The Taxpayers attended the hearing along with their accountant, Roy Hadaway. Assistant counsel Beth Acker represented the Department. This Final Order is based on the evidence presented by the parties.

FINDINGS OF FACT

The Taxpayers claimed a net operating loss of approximately \$72,000.00 on their 1990 Alabama return. The Taxpayers attempted to carry the loss back to 1987 and 1988 and for that purpose filed amended 1987 and 1988 returns along with their 1990 return.

The Taxpayers also filed a form NOL-85 computation of net operating loss along with the returns. Both Taxpayers signed part III on form NOL-85 and thereby elected to carry the loss forward only. The Department accordingly disallowed the carrybacks to 1987 and 1988.

The Taxpayers contend that they mistakenly signed part III on form NOL-85 and that the carrybacks should be allowed because they clearly intended to carry the loss back to 1987 and 1988.

CONCLUSIONS OF LAW

Alabama's NOL statute is codified at Code of Ala. 1975, §40-18-15(16). Subparagraph d. of the above statute reads as follows:

d. Any taxpayer entitled to a carryback period under paragraph b may elect to relinquish the entire carryback period. Such election shall be made in such a manner as may be prescribed by the department of revenue, and shall be made by the due date (including extensions of time) for filing the taxpayer's return for the taxable year of the net operating lose for which the election is to be in effect. Such election, once made for any taxable year, shall be irrevocable for that taxable year.

The Department, in accordance with the above statute, has provided a space on part III of form NOL-85 by which a taxpayer may elect to forfeit a loss carryback and carry the loss forward only.

Part III on form NOL-85 carries the warning "Caution - Do Not Complete Part III If You Are Carrying Loss Back".

The Taxpayers clearly intended to carry the 1990 loss back to 1987 and 1988. However, equally clear is the fact that the Taxpayers elected to forfeit the carryback by signing part III of form NOL-85. Regardless of the Taxpayers' intent, the election to forfeit the loss carryback, once made, cannot be revoked. See paragraph d. above.

The above considered, the Department correctly disallowed the loss carrybacks to 1987 and 1988. The loss can be used only as a

carryover to subsequent years.

This is a Final Order entered by the Commissioner which may be appealed pursuant to Code of Ala. 1975, §41-22-20.

Entered on October 16, 1991.

JAMES M. SIZEMORE, JR., Commissioner