

STATE OF ALABAMA,  
DEPARTMENT OF REVENUE,

VS.

THOMAS H. WEST  
170 Twin Oaks Drive  
Nashville, TN 37211-1130,

Taxpayer.

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

Docket No. INC. 92-189

#### FINAL ORDER

The Department denied a claim for refund of 1988 income tax filed by Thomas H. West (Taxpayer). The Taxpayer appealed to the Administrative Law Division and the matter was submitted on the facts set out in the Department's Statement of the Case. The Taxpayer represented himself. Assistant counsel Beth Acker represented the Department.

#### FINDINGS OF FACT

Alabama income tax was withheld from the Taxpayer's wages during 1988. The Taxpayer subsequently filed his 1988 Alabama income tax return on January 27, 1989.

The Taxpayer filed an amended 1988 Alabama return on February 28, 1992 and deducted additional job hunting expenses. The Taxpayer worked as a computer programmer/analyst and the claimed expenses were for motel, travel and meal expenses incurred while looking for a new job in the same line of work.

The Department denied the deduction and the resulting refund because (1) the amended return (claim for refund) had not been filed within three years from payment of the tax as required by §40-18-43, and (2) job hunting expenses are not deductible under

Alabama law.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-18-43 requires that a petition for refund of income tax must be filed within three years from when the tax was paid. Department Reg. 810-3-43-.02 provides that if a return is filed late, then tax paid through withholding shall be deemed paid on the due date (including extensions) of the return.

The regulation does not address the situation where a return is filed on or before the due date, as in this case. The Department contends that if a return is timely filed, then tax paid through withholding is deemed paid on the date the return is filed, not on the due date of the return. I disagree.

For federal refund purposes, a return filed prior to the filing deadline (April 15th of subsequent year) is deemed filed on such last day, and any tax withheld is also deemed paid on such date. See, 26 U.S.C.A §6513. Although the Alabama statute of limitation for claiming refunds is different from the federal statute, the question of when a return is deemed filed or withholding tax deemed paid is the same, and in such cases federal authority should control, especially in the absence of any controlling Alabama statute or regulation.

As stated, for federal refund purposes withholding tax is deemed paid on the due date of the return, whether the return is filed before or after that date. Alabama should follow the federal

rule.<sup>1</sup> Otherwise, a taxpayer filing late would be rewarded by having longer to petition for a refund of tax previously withheld than a taxpayer filing early. For example, if the Taxpayer in this case had filed his original 1988 return after April 15, 1989 (or after February 28, 1989), then the Taxpayer's amended return filed on February 28, 1992 would have been timely. However, because the Taxpayer filed early, on January 27, 1989, the Department would deny the refund. For the above reasons, the amended return filed by the Taxpayer on February 28, 1992 should be accepted as timely filed.

The Department also argues that job hunting expenses are not deductible. However, job hunting expenses are deductible for federal purposes as ordinary and necessary business expenses under 26 U.S.C. §162 if the employment sought is within the taxpayer's established field. Black v. C. I. R. , 1973, 60 T. C. 108. Section

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<sup>1</sup>The Revenue Uniform Procedures Act was passed in the 1992 Regular Legislative Session and becomes effective October 1, 1992. The Act repeals §40-18-43 and adopts in substance the federal statute of limitations relating to refunds set out at 26 U.S.C.A. §6511. Federal authority would clearly apply after that date.

40-18-15(a) is modeled after §162 and thus the same deductions allowed under §162 should also be allowed by the Department. For Alabama purposes, ordinary and necessary job hunting expenses should be allowed if the job is in the taxpayer's established field.

The expenses in question were incurred by the Taxpayer while looking for a new job in his established line of work as a computer programmer. The Department does not challenge the amount of the expenses claimed by the Taxpayer. Accordingly, the deduction should be allowed and the refund in issue should be granted by the Department.

This is a Final Order which may be appealed by the Taxpayer pursuant to §41-22-20.

Entered on August 10, 1992.

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BILL THOMPSON  
Chief Administrative Law Judge