

JIMMY L. & MARTHA S. SANDERS §
6500 Keene's Mill Road
Cottondale, AL 35453, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers, §

vs.

STATE OF ALABAMA §
DEPARTMENT OF REVENUE. §

DOCKET NO. INC. 93-390

FINAL ORDER

The Revenue Department assessed income tax against Jimmy L. & Martha S. Sanders (together "Taxpayers") for the years 1976 and 1977. The Taxpayers appealed to the Administrative Law Division and a hearing was conducted on November 23, 1994. Jimmy Sanders (individually "Taxpayer") appeared at the hearing. Assistant counsel Mark Griffin represented the Department. Walter P. Crownover filed a post-hearing brief on behalf of the Taxpayers.

The issue in this case is whether the Department timely entered the assessments in issue against Jimmy Sanders and/or Martha S. Sanders.

The Taxpayers filed joint Alabama income tax returns for the years 1976 and 1977 on June 12, 1980. No money was paid with the returns. The Department entered preliminary assessments against the Taxpayers for the years in issue on June 1, 1982.

The Taxpayer, Jimmy Sanders, filed a petition in Chapter 11 bankruptcy on December 20, 1982. The Department subsequently filed a claim with the Bankruptcy Court on August 5, 1983. The

Taxpayer's plan in bankruptcy was confirmed by order of the Bankruptcy Court dated January 18, 1985. The taxes in issue were included in the payment plan, but evidently were not paid by the Taxpayer.

The bankruptcy action was closed on November 13, 1992. The Department subsequently entered the joint final assessments in issue against the Taxpayers on November 19, 1993.

The Taxpayers' representative agrees that the statute of limitations for assessing tax against Jimmy Sanders was stayed under §362 of the Bankruptcy Code (11 U.S.C. §362) when the petition in bankruptcy was filed in December 1982 . However, he also argues that the stay was lifted and the Department could have independently pursued its claim against Sanders after the bankruptcy plan was confirmed in 1985, citing 11 U.S.C. §§1141(d) and 362(c)(2). Consequently, he claims that the Department was barred from assessing the tax because the final assessments were not timely entered within 3 years from when the stay was lifted in 1985.

I agree that the bankruptcy stay was lifted and the Department could have entered final assessments against Sanders after the bankruptcy plan was confirmed in 1985. However, the fact that preliminary assessments were entered against Sanders prior to the running of the statute suspended indefinitely the time period for entering final assessments. Accordingly, the Department was not barred from entering the final assessments in issue against Sanders

in 1993. The Department was, however, barred from entering the final assessments against Martha Sanders. My reasoning is explained below.

Under applicable law, the Department had three years from when the returns were filed in June 1980 to assess tax against the Taxpayers. See, Code of Ala. 1975, §40-18-45(a) (repealed by Act 92-186, effective October 1992). Section 40-18-45(a) required entry of a final assessment within the three year period. Consequently, entry of the preliminary assessments in December 1982 did not stay the three year statute against either Taxpayer. The statute thus ran against Martha Sanders in June 1983, three years from the date the returns were filed.

However, as discussed, the statute was stayed concerning Jimmy Sanders when he filed a petition in bankruptcy in December 1982, prior to the running of the three year statute under §40-18-45(a).

While the statute was stayed, and thus still open, the Legislature passed Code of Ala. 1975, §40-29-50, effective January 1, 1984. Section 40-29-50 provided that entry of a preliminary assessment of income tax suspended indefinitely the running of the three year statute set out at §40-18-45(a). Consequently, because the preliminary assessments were timely entered against Jimmy Sanders and the statute was still open when §40-29-50 was enacted, the statute for entering final assessments against Jimmy Sanders was suspended indefinitely. While the Taxpayer is correct that the

Department could have entered final assessments after the bankruptcy stay was lifted in 1985, it was not barred from doing so in 1993. Consequently, those final assessments must be affirmed.

Judgment is entered against Jimmy L. Sanders for 1976 Alabama income tax in the amount of \$2,888.97, and 1977 Alabama income tax in the amount of \$7,374.79. However, Martha S. Sanders is dismissed from liability on the assessments.

This Final Order may be appealed from circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered on March 1, 1995.

BILL THOMPSON
Chief Administrative Law Judge