

DENVER & WANDA WHITE  
67 Substation Road  
Union Grove, AL 35175,

Taxpayers,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 98-424

### FINAL ORDER

The Revenue Department disallowed a deduction claimed by Denver and Wanda White (ATaxpayers@) on an amended 1997 Alabama income tax return. The Taxpayers appealed to the Administrative Law Division. A hearing was conducted on December 22, 1998. The Taxpayers represented themselves. Assistant Counsel Margaret McNeill represented the Department.

The Taxpayers received income in 1997 which they reported on their 1997 Alabama income tax return. The Taxpayers were required to repay the income in 1998. The issue in this case is whether the amount repaid in 1998 can be deducted in 1997.

The Taxpayers timely filed a 1997 Alabama income tax return and reported income of \$7,959 received from Security Mutual. The Taxpayers were required to repay the amount in 1998. The Taxpayers filed an amended 1997 Alabama return and deducted the amount repaid on the return. The Department disallowed the deduction. The Taxpayers appealed.

The Department contends that as cash basis taxpayers, the Taxpayers can

only deduct the amount repaid in 1998, not in 1997. The Taxpayers argue they should be allowed to deduct the amount in 1997 because they had no taxable income in 1998. Unfortunately for the Taxpayers, the Department is correct. Under current Alabama law, the Taxpayers, as cash basis taxpayers, can only deduct the amount in 1998, the year it was actually repaid.

Under federal law, the Taxpayers would be allowed to deduct the 1998 repayment in 1997. 26 U.S.C. § 1341 provides that if a taxpayer receives income in one year and is required to repay the amount in a later year, the amount repaid can be deducted in the year the income was received and reported. In substance, the taxpayer is put in the same position as if he had never received the income. Unfortunately, Alabama law does not presently incorporate or include a statute similar to § 1341.

The Department's Answer indicates that the Taxpayers owe \$515.45, plus applicable interest, for 1997. The Department should bill the Taxpayers, and if not paid, the Department should assess the Taxpayers for the amount due.<sup>1</sup>

The Administrative Law Division has knowledge that the Department intends to introduce a Technical Corrections Bill in the 1999 Legislature that incorporates

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<sup>1</sup>The Department should have initially assessed the Taxpayers for the additional amount due. Instead, however, the Department notified the Taxpayers that the disallowed deduction resulted in a zero refund for 1997. The Taxpayers submitted that notice to the Administrative Law Division with their appeal. The Administrative Law Division thus assumed that the case involved a denied 1997 refund, and docketed the appeal accordingly.

'1341 into Alabama law, for all open tax periods. If '1341 is incorporated into Alabama law, the Taxpayers would be allowed to deduct in 1997 the amount repaid in 1998. They could then claim a refund for the year, assuming they do so within the applicable statute of limitations.

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

Entered March 31, 1999.

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BILL THOMPSON  
Chief Administrative Law Judge

BT:ks

cc: Margaret Johnson McNeill, Esq.  
Denver & Wanda White  
Kim Herman (8J049385-9)