

THOMAS C. & GENEVA HAYNES
108 Carriage Lane
Peachtree City, GA 30269,

Taxpayers,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 98-430

FINAL ORDER

The Revenue Department assessed income tax against Thomas C. & Geneva Haynes (together ATaxpayers@) for the years 1992, 1993, 1994, and 1996. The Taxpayers appealed to the Administrative Law Division pursuant to Code of Ala. 1975, ' 40-2A-7(b)(5)a. A hearing was conducted on January 6, 1999. The Taxpayers represented themselves. Assistant Counsel Gwen Garner represented the Department.

This case involves two issues:

(1) Did the Taxpayers fail to appeal the 1992, 1993, and 1994 final assessments within 30 days, as required by Code of Ala. 1975, ' 40-2A-7(b)(5)a.

(2) The Department disallowed net operating loss (ANOL@) carryover deductions claimed by the Taxpayers on their Alabama returns for the subject years. The second issue is whether those NOL deductions were correctly disallowed by the Department.

From 1979 until 1995, Thomas C. Haynes (individually ATaxpayer@) operated and was a shareholder in Alabama Memorial Gardens, Inc., an Alabama

Subchapter S corporation. Alabama Memorial Gardens operated a funeral home and cemetery near Lanett, Alabama. The Taxpayers lived in Georgia and filed Georgia income tax returns before 1990.

The Taxpayers moved to Alabama in 1990. The Taxpayer sold Alabama Memorial Gardens in September 1995. He also closed the business= mailing address, P.O. Box 265, Lanett, Alabama, shortly after selling the business.

The Taxpayers filed their 1990 through 1994 Alabama income tax returns in December 1995. The address on the returns was P.O. Box 265, Lanett, Alabama. The 1992, 1993, and 1994 returns claimed an NOL carryover from 1990 and 1991. The 1990 return also indicated that the Taxpayers had filed Alabama returns in prior years. The Department had no record that the Taxpayers had filed Alabama returns before 1990. The Department thus requested information from the Taxpayers concerning their pre-1990 returns. The Department mailed the request to the address on the returns, P.O. Box 265, Lanett, Alabama. Unfortunately, as indicated, the Taxpayer had closed that post office box and left no forwarding address. The Department's notices were thus returned by the Postal Service marked "Box Closed - Left No Forwarding Address". Because the Department did not have sufficient information to know if the 1990 and 1991 losses should first be carried back to prior years, as required by law, it denied the carryover losses claimed in 1992, 1993, and 1994. Based thereon, the Department entered the 1992, 1993, and 1994 final assessments in issue on September 25, 1996.

The final assessments were also mailed to the Taxpayers=last known address, P.O. Box 265, Lanett, Alabama. Unfortunately, because the Taxpayers had left no forwarding address, the final assessments could not be delivered. The Taxpayers

were not aware of the 1992, 1993, and 1994 liabilities until the Department's Collections Services Division contacted them in January 1998.

The Taxpayers also carried over a loss from 1995 to 1996. The Department audited the Taxpayers' 1995 return and determined they had not incurred a loss in that year. The Department consequently disallowed the NOL carryover to 1996, and based thereon entered the 1996 final assessment in issue on September 17, 1998. The 1996 final assessment was mailed to the Taxpayers' new address shown on their 1995 and 1996 Alabama returns. The Taxpayers appealed the 1996 final assessment and also the 1992, 1993, and 1994 final assessments on September 24, 1998 (postmarked date).

ISSUE 1 - WERE THE APPEALS FOR 1992, 1993, AND 1994 TIMELY FILED?

Code of Ala. 1975, ' 40-2A-7(b)(5)a. requires that a taxpayer must appeal a final assessment within 30 days. If an appeal is not timely filed, it must be dismissed for lack of jurisdiction. Code of Ala. 1975, ' 40-2A-7(b)(5)c.

The Department entered the 1992, 1993, and, 1994 final assessments in issue on September 25, 1996. The Taxpayers appealed two years later on September 24, 1998. They claim, however, that they were not notified of the final assessments until 1998. That raises the issue of whether the final assessments were properly served on the Taxpayers when entered in September 1996.

The Department is required to serve a final assessment on a taxpayer at the taxpayer's last known address. Code of Ala. 1975, ' 40-2A-7(b)(4)c. The

Department mailed the final assessments to the address listed by the Taxpayers on their returns for those years, P.O. Box 265, Lanett, Alabama. That address was the last known and only address the Department had for the Taxpayers. The Department thus properly served the final assessments on the Taxpayers as required by Alabama law. Because the Taxpayers failed to appeal within the required 30 days, the Administrative Law Division is without jurisdiction, and the Taxpayers' appeal of the 1992, 1993, and 1994 final assessments must be dismissed.

The Taxpayers still have the option of paying the final assessments and then petitioning for a refund to recover the tax. Code of Ala. 1975, § 40-2A-7(c)(1). To obtain a refund, the Taxpayers must prove they did not have pre-1990 Alabama income against which the 1990 and 1991 losses would first have to be applied. The Taxpayers would be required to file 1987, 1988, and 1989 Alabama returns and report the income received from Alabama Memorial Gardens in those years. If that income was less than the 1990 and 1991 losses, at least a part of those losses could be carried forward to the subject years.

ISSUE II - SHOULD THE NOL DEDUCTIONS BE ALLOWED?

The issue concerning the NOL deductions claimed in 1992, 1993, and 1994 is moot because the appeal for those years has been dismissed.

Concerning the NOL carried over from 1995 to 1996, the Department audit indicated that the Taxpayers did not incur a loss in 1995. The Taxpayers failed to prove otherwise. Consequently, because there was no 1995 loss, there can be no

NOL carryover from that year to 1996. The 1996 NOL was thus correctly disallowed.

The 1996 final assessment is affirmed. Judgment is entered against the Taxpayers for \$323.45.

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

Entered February 2, 1999.

BILL THOMPSON
Chief Administrative Law Judge

BT:ks

cc: Gwen Garner, Esq.
Thomas C. & Geneva Haynes
Kim Herman (253-46-2742)