

KENNETH V., JR. & PHYLLIS R.  
MADREN  
70 Martin Point Court  
Roswell, GA 30076-2830,

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

Taxpayers,

DOCKET NO. INC. 99-210

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

### FINAL ORDER

The Revenue Department assessed 1994 income tax against Kenneth V., Jr. & Phyllis R. Madren (ATaxpayers@). 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 June 29, 1999. The Taxpayers=representative, CPA Stanley M. Smith, filed a written response in lieu of appearing. Assistant Counsel Keith Maddox represented the Department.

The Taxpayers concede that they owe additional 1994 income tax. The issue is when did interest begin accruing on the additional tax.

The Taxpayers filed their original 1994 non-resident Alabama income tax return in April 1995. They paid the tax due at that time. The Taxpayers incurred a non-Alabama net operating loss (ANOL@) in 1997. They filed an amended 1994 federal return on May 28, 1998 on which they claimed an NOL carryback to that year. The amended return reduced the Taxpayers= 1994 federal liability, which correspondingly reduced the federal tax paid deduction the Taxpayers could

claim for Alabama purposes in 1994.

The Taxpayers also filed an amended 1994 Alabama return on May 28, 1998. The amended return claimed a reduced federal tax paid deduction for the year, which resulted in additional Alabama tax due of \$4,533. The Taxpayers paid \$3,535, and concede that the balance of \$998 is owed. They argue, however, that the assessed interest of \$1,514.39 was improperly calculated from April 15, 1995, the due date of the original 1994 return. They argue instead that interest should be computed from the date the amended Alabama return was filed on May 28, 1998.

The Department agrees that interest should not have been assessed from April 15, 1995. The Department disagrees, however, with the Taxpayers' claim that interest should accrue from the date the amended Alabama return was filed. The Department instead argues that interest should accrue from the date the federal amended return was filed. I agree with the Department, although in effect there is no practical difference between the two arguments because the federal and State amended returns were both filed on May 28, 1998. The issue, however, is when must interest begin accruing under Alabama law.

Interest is due on any tax not paid by the due date. Code of Ala. 1975, § 40-1-44. 1994 income tax was due on April 15, 1995. Consequently, if any 1994 tax due on April 15, 1995 was not paid by that date, interest would begin accruing on that date. In this case, the Taxpayers paid in full the 1994 tax that was initially owed on the April 15 deadline. The additional 1994 tax in issue was not owed by the Taxpayers, and thus was not due, until the Taxpayers filed their amended 1994

federal return on which

they claimed the NOL carryback. Only then was the Taxpayers' 1994 federal liability decreased, which correspondingly increased their 1994 Alabama liability.

The additional 1994 tax and interest owed by the Taxpayers, with interest computed from May 28, 1998 when the additional tax became due, is \$1,314.57 (\$998 tax plus \$316.57 interest). Judgment is entered accordingly.

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

Entered July 8, 1999.

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BILL THOMPSON  
Chief Administrative Law Judge

BT: ks

cc: Keith Maddox, Esq.  
Stanley M. Smith, CPA  
Kim Herman (249-64-0694)