

FROSTIE WHITE  
901 Gayfer Avenue, Apt. 718  
Fairhope, AL 36532,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 00-262

### FINAL ORDER

The Revenue Department assessed Frostie White (ATaxpayer®) for 1996 income tax. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, ' 40-2A-7(b)(5)a. A hearing was conducted on August 15, 2000 in Mobile, Alabama. The Taxpayer was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Duncan Crow represented the Department.

The issue in this case is whether the Department correctly assessed the Taxpayer for penalty and interest relating to her 1996 Alabama liability.

The Taxpayer failed to timely file a 1996 Alabama return. The Department received information from the IRS showing that the Taxpayer's 1996 federal return included an Alabama address. The Department notified the Taxpayer by letter dated February 10, 1999 that a 1996 Alabama return was due. The Taxpayer filed her 1996 return on March 8, 1999. The return showed a Fairhope, Alabama address.

The Taxpayer filed her 1997 Alabama return on April 8, 1999. That return showed a Bay Minette, Alabama address. The Department consequently changed the Taxpayer's last known address in its computer system from the Fairhope address to the Bay Minette address.

The Department billed the Taxpayer in November 1999 for penalties and interest relating to her delinquent 1996 return and payment. The billing was mailed to the Bay Minette address, which was the Taxpayer's last known address on her most recent (1997) return. The Taxpayer failed to reply. The Department subsequently entered the final assessment in issue and mailed it to the Bay Minette address. The Postal Service returned the final assessment showing "no such street." The Department remailed the final assessment to the Fairhope address shown on the Taxpayer's 1996 return. The Taxpayer appealed.

The Taxpayer first questions why the final assessment was sent to a Bay Minette address. She claims she has lived in Fairhope for the last six years.

The Department is required to mail a final assessment to a taxpayer's last known address.<sup>1</sup> Code of Ala. 1975, ' 40-2A-7(b)(4)c. The Taxpayer listed a Fairhope address on her 1996 Alabama return. However, she later filed a 1997 return which showed a Bay Minette address. That was the Taxpayer's last known address available to the Department.<sup>1</sup> The Department thus correctly mailed the final assessment to the Bay

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<sup>1</sup>The return address on the Taxpayer's notice of appeal was 901 Gayfer Avenue, Apt. 718, Fairhope, Alabama 36532. The address listed by the Taxpayer on her 1997 Alabama return was 901 Gayfer Avenue, Bay Minette, Alabama 36507. A copy of the 1997 return is attached to this Final Order. I assume that the Taxpayer mistakenly put A Bay

Minette address.

The Taxpayer also complains that the penalty and interest should be waived because in good faith she did not think she was required to file a 1996 Alabama return. She claims that upon learning that she should have filed a 1996 return, she voluntarily did so.

First, interest is required by Alabama law and cannot be waived. Code of Ala. 1975, '40-1-44.

Second, concerning the penalties, the evidence shows that the Taxpayer filed a 1996 return only after being notified by the Department in February 1999 that a 1996 return was due. That fact conflicts with the Taxpayer's claim that she voluntarily filed the 1996 return without being contacted by the Department.

In any case, a penalty may be waived only upon a showing of reasonable cause. Code of Ala. 1975, '40-2A-11(h). Reasonable cause includes a non-recurring honest mistake. Rev. Proc. 97-003. The Department's records indicate that she has been chronically delinquent in filing her Alabama income tax returns. For example, in addition to

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Minette, Alabama, 36507" on her 1997 return because the street number and name are the same as her Fairhope address. However, the Department could not and should not have assumed that the Taxpayer's correct address was still in Fairhope.

filing her 1996 return late, the Taxpayer also filed her 1997 return late on April 8, 1999, her 1998 return late on June 2, 1999, and her 1999 return late on June 12, 2000. Consequently, because her delinquent filing is recurrent, reasonable cause does not exist to waive the penalties in issue.

The final assessment is affirmed. Judgment is entered against the Taxpayer for \$609.70.

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

Entered August 17, 2000.

BILL THOMPSON  
Chief Administrative Law Judge