

ROBIN C. JACOBSON (DEC) §
310 ANTLER DRIVE §
ENTERPRISE, AL 36330-2212, §

Taxpayer, §

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE. §

STATE OF ALABAMA
ALABAMA TAX TRIBUNAL

DOCKET NO. INC. 13-1294

FINAL ORDER

This appeal involves the Alabama income tax liabilities of Robin C. Jacobson (DEC) (“Taxpayer”) for the years 2009, 2010, and 2011. The Taxpayer’s sister, Joeann C. Hamby, appealed to the Administrative Law Division, now the Alabama Tax Tribunal, pursuant to Code of Ala. 1975, §40-2A-7(c)(5)a. A hearing was conducted on November 20, 2014. Ms. Hamby attended the hearing. Assistant Counsel David Avery represented the Revenue Department.

The Taxpayer was diagnosed with terminal stage four cancer in early 2010. Her condition worsened, and she died by a self-inflicted gunshot wound on September 23, 2012.

The Taxpayer’s sister, Joeann Hamby, was appointed as personal representative of the Taxpayer’s estate. In early 2013, Hamby discovered that due to her illness, the Taxpayer had not filed Alabama income tax returns for the years in issue, 2009 through 2011. She immediately prepared returns for the Taxpayer using the Taxpayer’s records. She subsequently filed the returns for the subject years in April 2013.

The 2009 return requested a refund of \$355 that had been paid through withholding. The Department disallowed the refund because it was not timely claimed within two years of the original due date of the return, as required by Code of Ala. 1975, §40-2A-7(c)(2)a.

The Department also assessed the Taxpayer for a \$50 late filing penalty for 2009, which the Taxpayer's representative paid.

The 2010 return claimed a refund of \$624. That refund was allowed, but was applied in full to the Taxpayer's 2011 liability. The Department again assessed the Taxpayer a late filing penalty of \$50 for 2010. The Taxpayer's representative also paid that penalty.

The 2011 return reported a liability of \$2,039. As indicated, the 2010 refund of \$624 was applied to that liability, and the Taxpayer's representative subsequently paid the balance due for the year, including a \$315.88 penalty.

Section 40-2A-7(c)(2)a. provides generally that a refund must be claimed within three years from the date the return was filed, or two years from payment of the tax, whichever is later. However, if no return was timely filed, as in this case, a taxpayer must claim a refund within two years from the date of payment of the tax. For purposes of the statute, tax paid through withholding is deemed paid on the original due date of the return.

In this case, the Taxpayer's 2009 return was due on April 15, 2010. The Taxpayer (or her personal representative) thus had two years, or until April 15, 2012 to request a refund of the tax overpaid by withholding in 2009. Because the Taxpayer or her personal representative failed to do so, the Department correctly disallowed the claimed 2009 refund as untimely.

A penalty may be waived for reasonable cause. Code of Ala. 1975, §40-2A-11(h). In this case, the Taxpayer timely filed an extension until October 15, 2010 to file her 2009 Alabama income tax return. She was subsequently diagnosed with terminal cancer before the extended due date. She underwent numerous treatments, and at least one operation.

According to her sister, the Taxpayer was in such constant pain that she eventually ended her own life in September 2012. Under the circumstances, there is clearly reasonable cause why the Taxpayer failed to timely file her 2009, 2010, and 2011 Alabama returns, and also to timely pay the tax due for 2011.

The penalties of \$50, \$50, and \$315.88 paid on behalf of the Taxpayer by the Taxpayer's representative for 2009, 2010, and 2011, respectively, are due to be refunded, plus applicable interest from when the amounts were paid. Judgment is entered accordingly.

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

Entered December 1, 2014.

BILL THOMPSON
Chief Tax Tribunal Judge

bt:dr

cc: David E. Avery, III, Esq.
Joeann C. Hamby