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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers,

§ DOCKET NO. INC. 02-821

v.

§
STATE OF ALABAMA
DEPARTMENT OF REVENUE.

FINAL ORDER

This case involves a final assessment of 2001 income tax entered against the above Taxpayers. The Department penalized the Taxpayers because they failed to file a quarterly estimated income tax return in 2001 for non-wage income they received in that year. 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 March 4, 2003. The Taxpayers' representative was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Jeff Patterson represented the Department.

The Taxpayers received a stock settlement of \$99,625 in the fourth quarter of 2001. They reported that income on their annual 2001 Alabama income tax return, and paid the tax due.

The Department subsequently assessed the Taxpayers for the 10 percent failure to timely file return penalty levied at Code of Ala. 1975, §40-2A-11(a) because they failed to file a fourth quarter estimate relating to the non-wage income. The amount of the penalty was \$308.10, or 10 percent of the additional tax due as reported on the annual return. The Taxpayers appealed.

The Taxpayers claim they should have been assessed the 6 percent

underestimation penalty levied at Code of Ala. 1975, §40-18-80. They accordingly computed the penalty due on ADOR Form 2210AL, entitled "Estimated Tax Penalties for Individuals," and paid the computed amount due of \$124. The Department subsequently assessed the Taxpayers for \$184 (\$308 originally billed less \$124 paid). The Taxpayers paid that amount, and now claim that the \$184 should be refunded.

The 10 percent penalty levied at Code of Ala. 1975, §40-2A-11(a) applies in this case because the Taxpayers failed to file a fourth quarter estimate. But the penalty should have been 10 percent of the amount due on the quarterly estimate, not 10 percent of the amount due on the annual return. That issue is moot, however, because the penalty is waived for reasonable cause. Code of Ala. 1975, §40-2A-11(h).

Reasonable cause includes, but is not limited to, a non-recurring, good faith mistake. The Taxpayers' failure to timely file a quarterly return for the fourth quarter of 2001 constituted a one time, good faith mistake. The Taxpayers also apparently relied on the advice of their tax preparer, which also establishes reasonable cause. However, the Taxpayers owe interest on the delinquent estimated tax, computed from the due date of the quarterly return on which the estimated tax should have been reported and paid until the tax was paid. Code of Ala. 1975, §40-1-44(a). The Department should issue the Taxpayers a refund of the total penalty paid less interest due.

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

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BILL THOMPSON
Chief Administrative Law Judge