

ROBERT AND NANCY BISHOP
12305 County Road 9
Milport, AL 35576,

Taxpayers,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 03-583

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed Robert and Nancy Bishop (“Taxpayers”) for 2000 Alabama income tax. 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 December 18, 2003. The Taxpayers’ representative was notified of the hearing by certified mail, but failed to appear. Chief Counsel Henry Chappell represented the Department.

The Taxpayers live in Millport, Alabama. Nancy Bishop worked in Mississippi in 2000. Robert Bishop worked in Alabama. The Taxpayers filed a 40A “short” form Alabama income tax return for the 2000 tax year. They also filed a 2000 Mississippi return on which they reported Nancy Bishop’s income earned in Mississippi. The Mississippi return showed tax due of \$435, and Mississippi tax withheld of \$402.

The Department subsequently received IRS information indicating that the Taxpayers had failed to report certain interest and annuity income on their 2000 federal return. The Department reviewed the Taxpayers’ 2000 Alabama return, and discovered that they had failed to report Nancy Bishop’s income earned in that year, in addition to the interest and annuity income they had failed to report on their federal return. It assessed the Taxpayers accordingly.

The Taxpayers subsequently filed an amended 2000 Alabama return with the Department in May 2003. The return claimed a credit for taxes paid to Mississippi, and showed tax due of \$194. The Taxpayers remitted that amount with the return.

The Department rejected the Taxpayers' amended return based on its position that their election to initially file a 40A short form was irrevocable, citing Dept. Reg. 810-3-81-.01(2). The Department consequently applied the \$194 paid by the Taxpayers to the total amount due, and assessed the Taxpayers for the balance due of \$1,409.17. The Taxpayers appealed.

As indicated, the Department rejected the Taxpayers' amended return based on its position that their initial election to file the Form 40A short form was irrevocable. Before 1998, Code of Ala. 1975, §40-18-81(c) provided that the "exercise of the election to file the 'short form' provided for herein is irrevocable for the tax year for which made and cannot be changed after the time prescribed by law for filing the return." Dept. Reg. 810-3-81-.01(2), which was last amended in 1988, reiterates that provision.

The irrevocability of the short form election was, however, repealed in 1998 by Act 98-502. Consequently, a taxpayer that initially files a Form 40A can now file an amended Form 40 return for the year. Unfortunately, the Department regulation cited above has not been amended to reflect the 1998 change.

Unless the Taxpayers' amended 2000 return should be rejected for some previously undisclosed reason, it should be accepted by the Department. It should be adjusted to reflect all of the income received by the Taxpayers in the subject year. The Taxpayers should also be allowed a credit for 2000 income tax paid to Mississippi, and also for all

Alabama tax withheld in the year. The Department should recompute the Taxpayers' liability as indicated and notify the Administrative Law Division of the adjusted amount due. A Final Order will then be entered.

This Opinion and Preliminary Order is not an appealable Order. The Final Order, when entered, may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered December 19, 2003.