

CLARENCE J. & ALFREDA DAVIS  
7424 Westmoreland Drive  
Fairfield, AL 35064,

Taxpayers,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 04-159

### FINAL ORDER

The Revenue Department denied a refund of 2000 income tax requested by Clarence J. and Alfreda Davis ("Taxpayers"). The Taxpayers appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(c)(5)a. A hearing was conducted on April 15, 2004 in Birmingham, Alabama. Clarence Davis attended the hearing. Assistant Counsel Mark Griffin represented the Department.

The issue is whether the Taxpayers' 2000 refund petition is barred by the statute of limitations for claiming refunds at Code of Ala. 1975, §40-2A-7(c)(2)a.

The Taxpayers filed their 2000 Alabama income tax return on September 8, 2003. The return claimed a refund of tax paid by withholding in 2000. The Department denied the refund because it was not timely claimed as required by §40-2A-7(c)(2)a. The Taxpayers appealed.

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.

As indicated, the Taxpayers paid their 2000 Alabama tax through withholding. The original due date of the 2000 return was April 15, 2001. The Taxpayers had two years from that date, or until April 15, 2003, to claim a refund. They failed to do so. Consequently, the refund was properly denied by the Department. See generally, *State v. Pettaway*, 794 So.2d 1153 (Ala.Civ.App. 2001).

At the April 15 hearing, the Taxpayer cited the following sentence in Reg. 810-14-1-.19(2) in support of his case. "An original return filed after the due date shall be considered as filed on the original due date for purposes of petitioning for refund."

The above sentence is confusing. If literally interpreted, an original return requesting a refund, as was filed in this case, must be deemed as timely filed on the due date, regardless of when it is actually filed. In that case, the refund request would in all cases be timely. As explained above, that result is clearly contrary to §40-2A-7(c)(2), at least as it relates to tax withheld or paid by estimate during the year.

I believe the intent of the sentence was to require taxpayers to request refunds within three years after the original due date of the return. For example, if a 2000 return due on April 15, 2001 was not filed until April 15, 2003, the return would be deemed filed on April 15, 2001. The taxpayer would have three years from that deemed filed date, but only one year from when the return was actually filed, to thereafter file a separate petition for refund. The author of the regulation apparently did not consider that a taxpayer may petition for a refund through an original return, as the Taxpayers did in this case. In any case, as indicated, the sentence is not supported by the language of §40-2A-7(c)(2), and

concerning taxes withheld, is clearly contrary to the statute. Consequently, the sentence should be deleted from the regulation.

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

Entered April 20, 2004.