

MARY MCKINNEY
201 BRUER ROAD
DALEVILLE, AL 36322,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 06-915

**FINAL ORDER DENYING DEPARTMENT'S
APPLICATION FOR REHEARING**

In December 2004, the Department garnished two certificates of deposit at Colonial Bank to satisfy an outstanding liability of Aaron Copeland. The CDs were jointly owned by Copeland and the Taxpayer in this case, Mary McKinney.

The Taxpayer applied for a refund of the amounts collected because she had contributed the entire amounts used to purchase the CDs. The Department denied the refund. The Taxpayer appealed.

The Department conceded at a hearing conducted in the case on January 11, 2007 that if the Taxpayer had contributed the entire amounts used to purchase the CDs, it should not have garnished the CDs to pay Copeland's liability. The Taxpayer's representative subsequently submitted information to the Department. The Department responded that "Ms. McKinney has submitted documentation to support her claim that she used her own proceeds to purchase the garnished certificates of deposit." Department's Response to Preliminary Order at 2. Based thereon, the Administrative Law Division entered a Final Order on March 17, 2007 directing the Department to refund to the Taxpayer the \$10,337.21 in issue, plus applicable interest.

The Department has timely applied for a rehearing. The Department does not argue that the Taxpayer is not due a refund. Rather, it contends that the Administrative Law Division did not have jurisdiction to rule in the case. I disagree.

Code of Ala. 1975, §40-2A-8(c) provides that “[t]his section shall not apply . . . to the collection of any liability due the department.” The Department argues that the Administrative Law Division does not have jurisdiction pursuant to the above section because this case involves a collection dispute. “This action is not a petition for refund as prescribed by the statute, it is a collection dispute. Because this matter is a collection dispute rather than a petition for refund, the Department asserts that this Honorable Court does not have jurisdiction and that the matter should be dismissed for the lack of jurisdiction and submitted to the Collection Services Division for appropriate action.” Department’s Application for Rehearing at 2 – 3.

The Department’s position is incorrect because this case involves an appeal of a denied refund, not a disputed collection matter. The Department collected the money in issue by garnishment. The Taxpayer petitioned for a refund of the money. The Department denied the refund. The Taxpayer timely appealed the denied refund pursuant to Code of Ala. 1975, §40-2A-7(c). The Administrative Law Division clearly has jurisdiction.

The Department’s Collection Services Division was involved because it collected the money by garnishing the Taxpayer’s CDs. But the matter ceased being a collection matter once the money was collected or paid. A taxpayer can appeal to the Administrative Law Division or to circuit court concerning a denied refund petition pursuant to §40-2A-7(c) whether the money in issue is voluntarily paid by the taxpayer or forcibly collected by

garnishment or another collection method. The purpose of §40-2A-8(c) is only to prevent a taxpayer from appealing to the Administrative Law Division concerning an on-going collection action. This case does not involve an on-going collection matter. Section 40-2A-8(c) thus does not apply.

The Department's Application for Rehearing is denied. The March 13, 2007 Final Order is affirmed.

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

Entered April 3, 2007.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Warren W. Young, Esq.
Benjamin S. Armstrong, Esq. (w/enc.)
Kim Peterson