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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers,

DOCKET NO. INC. 00-530

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed 1993, 1994, and 1995 income tax against Aaron D. and Saundra Jones (ATaxpayers@). 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 November 28, 2000. The Taxpayers were notified of the hearing by certified mail, but failed to appear. Assistant Counsel LaRonica Lightfoot represented the Department.

ISSUES

This case involves three issues:

- (1) Were various deductions claimed by the Taxpayers on their Alabama returns for the subject years properly denied by the Department;
(2) Were the Taxpayers timely assessed by the Department; and,
(3) Should the interest assessed by the Department be abated in whole or in part?

FACTS

The Department audited the Taxpayers=1993, 1994, and 1995 Alabama income tax returns. The 1994 and 1995 returns were timely filed. The 1993 return was filed in August

1994. The Department requested records verifying various deductions claimed on those returns. The Taxpayers failed to respond. The Department consequently entered preliminary assessments against the Taxpayers on April 30, 1997. The Department entered final assessments on July 23, 1997. However, those final assessments were voided shortly after they were entered because the Department had misspelled Sandra Jones= name on the final assessments.¹

The Department reentered the final assessments on July 26, 2000. The Department could not explain at the November 28 hearing why the final assessments had not been reentered earlier.

ANALYSIS

Issue (1). Were the deductions claimed on the returns properly denied by the Department?

All taxpayers are required to keep adequate records from which their correct tax liability can be computed or verified by the Department. Code of Ala. 1975, '40-2A-7(a)(1). The burden is also on a taxpayer to provide adequate records verifying all claimed deductions. *McDonald v. CIR*, 114 F.3d 1194 (1997). The Department thus properly disallowed the deductions claimed by the Taxpayers in the subject years because they

¹The Taxpayers= tax preparer incorrectly spelled Sandra Jones= name on the returns as ASandra Jones.@ The Department thus mistakenly entered the final assessments against Sandra Jones, not Sandra Jones.

failed to provide substantiating records.

Issue (2). Did the Department timely assess the Taxpayers?

The Department is authorized to enter a preliminary assessment against a taxpayer within three years from the due date of the return, or three years from the date the return is filed, whichever is later. Code of Ala. 1975, ' 40-2A-7(b)(2). The Department entered preliminary assessments for the years in issue on April 30, 1997. The 1994 and 1995 preliminary assessments were thus timely entered within three years from the due date of the returns for those years. The 1993 preliminary assessment was also timely entered within three years from when the Taxpayers filed their return for that year in August 1994.

What is the legal effect of the Department voiding the initial final assessments entered in July 1997, and not reentering the final assessments until July 2000? Unfortunately for the Taxpayers, once the Department timely enters a preliminary assessment pursuant to ' 40-2A-7(b)(2), it is under no time constraint to enter a final assessment. Consequently, the Department was not time barred from reentering the final assessments in July 2000.

Issue (3). Should the interest assessed by the Department be abated?

As indicated, the Department failed to explain at the November 28 hearing why it failed to reenter the final assessments until July 2000, three years after the initial final assessments had been voided. In the interim, considerable interest accrued on the tax due.

If the Administrative Law Division had authority to abate interest, it would under the circumstances abate the interest that accrued from when final assessments were initially

entered on July 23, 1997, until final assessments were reentered on July 26, 2000. But interest is required by statute, Code of Ala. 1975, ' 40-1-44, and the Administrative Law Division is not authorized to abate interest.

However, the Department's Taxpayer Advocate is authorized to abate interest that accrued because of undue delay by the Department. Code of Ala. 1975, ' 40-2A-4(b)(1)c. A copy of this Opinion and Preliminary Order will be forwarded to the Department's Taxpayer Advocate for review and determination if a portion of the interest included in the final assessments should be abated. A Final Order will be entered upon receipt of the Taxpayer Advocate's response.

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 November 29, 2000.