

ROBERT L. & SHELIA B. MICHAELS §
2712 LAKE FOX ROAD
CHANCELLOR, AL 36316, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers, §

DOCKET NO. INC. 08-105

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department denied a 2004 Alabama income tax refund requested by Robert L. and Shelia B. Michaels (“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 March 27, 2008. Robert Michaels (individually “Taxpayer”) attended the hearing. Assistant Counsel Margaret McNeill represented the Department.

The Taxpayers filed their 2004 Alabama income tax return on October 1, 2007. The return claimed a refund of tax paid by withholding in 2004. 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 2004 Alabama tax through withholding. The original due date of the 2004 return was April 15, 2005. The Taxpayers had two years from that date, or until April 15, 2007, 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).

The Taxpayer explained at the March 27 hearing that he was unable to file the return before October 2007 because of health problems. Unfortunately for the Taxpayer, there is no good faith or reasonable cause exception to the two year statute. In any case, the Taxpayer could have hired an accountant or other tax preparer to complete and file his return by the April 15, 2005 due date, or at least within two years of that date.

The Taxpayer also cited two Administrative Law Division decisions in support of his position, *Scott v. State of Alabama, Inc.* 94-450 (Admin. Law Div. 3/1/1995) and *Burquez v. State of Alabama, Inc.* 93-259 (Admin. Law Div. 10/14/1993). The Taxpayer is correct that the refunds were granted in those cases even though the returns requesting the refunds were filed more than two years after the due date. When those cases were decided, however, the statute in question, §40-2A-7(c)(2)a., contained a loophole that allowed a taxpayer to file a return and claim a refund at any time. The loophole was closed when §40-2A-7(c)(2)a. was amended in 1995. Under post-1995 law, a refund of tax withheld or paid by estimate must be claimed within two years from the due date of the return. The 1995 amendment was explained in *Rollins v. State of Alabama, Inc.* 01-442 (Admin. Law Div. 9/13/2001):

The Taxpayers' CPA inquired at the August 21 hearing as to why Alabama's statute of limitations is different from the federal three year statute. Before 1995, §40-2A-7(c)(2)a. required that a refund must be claimed within three years from when the return was filed, or two years from when the tax was paid, whichever was later. That statute contained a loophole because it allowed taxpayers that failed to timely file a return to later file a return and claim a refund at any time, even years after the due date of the return. In effect, there was no statute of limitations for taxpayers that failed to timely file, whereas a taxpayer that timely filed had only three years to claim a

refund.

The Legislature amended the statute to close the loophole in 1995. See, Act 95-607. Unfortunately, the amendment also created a two year statute for tax paid by withholding or estimated payments if a return is not timely filed. The CPA is correct that the federal government allows a taxpayer three years to claim a refund in such cases. 26 U.S.C. §6511.

The controversial two year statute in issue has been the subject of much litigation before the Administrative Law Division. *Carlisle v. State of Alabama*, Inc. 00-584 (Admin. Law Div. 12/12/00); *Baisouny v. State of Alabama*, Inc. 00-314 (Admin. Law Div. 10/5/00); *Sheridan v. State of Alabama*, Inc. 00-347 (Admin. Law Div. 9/7/00); *Reed v. State of Alabama*, Inc. 00-243 (Admin. Law Div. 7/6/00), to name only a few of the cases. In every case, the statute has required the Administrative Law Division to deny any refund claimed outside of the two year statute. Alabama's appellate courts have affirmed that holding. *Pettaway*, supra.

Because the statute is inconsistent with federal law on the subject, the Department has attempted to have legislation passed conforming Alabama law with the federal law. Unfortunately, the Legislature has failed to act to date.

Rollins at 3 – 4.

As indicated, since 1995, a refund of tax withheld or paid by estimate must be claimed within two years from the original due date of the return. The Taxpayers failed to timely request a refund within that two year statute. The Department's denial of the Taxpayers' 2004 income tax refund is affirmed.

The Taxpayer submitted a copy of a 2004 Form 1099-G at the March 27 hearing showing that the Department had issued the Taxpayers a \$2,017 refund concerning 2004. The Administrative Law Division inquired with the Department's Individual Income Tax Division, and was informed that the refund was not issued and that the 1099-G had been issued in error.

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

Entered April 3, 2008.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Margaret Johnson McNeill, Esq.
Robert L. Michaels
Kim Peterson