

WILLIAM W. & ALLISON BEARD  
103 N. BAYVIEW STREET  
FAIRHOPE, AL 36532-2504,

Taxpayers,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

§ STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
§ ADMINISTRATIVE LAW DIVISION

§ DOCKET NO. INC. 10-209

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§

### FINAL ORDER

This appeal involves a denied refund of 2006 income tax requested by the above Taxpayers. The Taxpayers claimed an overpayment of \$18,665 on their 2006 Alabama income tax return. They requested that the overpayment be applied to their 2007 liability.

The Department claims that it did not receive the Taxpayers' 2006 return until September 28, 2009. It consequently denied the refund or claimed credit because it was not timely claimed within the two year statute of limitations at Code of Ala. 1975, §40-2A-7(c)(2)a.

The Taxpayers claim that they timely mailed the return to the Department by certified mail on October 12, 2007, or before the extended due date of October 15, 2007. They were directed to submit a copy of the signed certified mail receipt. They did so. The receipt shows that the certified letter was mailed at Point Clear, Alabama on October 9, 2007, and that it was mailed to the "AL Dept. of Revenue 2006 AL Tax Return." The Taxpayers also submitted the certified mail green card. That card shows the Department's correct address, and was stamped by the Department as "Received Oct 12 2007 AL REV DEPT."

The Department argues that "the receipt indicates that a piece of mail was received but that does not prove that the envelope contained (the Taxpayers') 2006 tax return." The

Department does not state what other correspondence, if any, was received from the Taxpayers on or about October 12, 2007.

The Department is correct that the Postal Service receipt and green card submitted by the Taxpayers do not absolutely prove that the related envelope actually contained the Taxpayers' 2006 Alabama return. But the receipt and green card constitute substantial circumstantial evidence that the 2006 return was in the envelope.

To begin, the Taxpayers filed an extension to file their 2006 Alabama return. The extended due date for filing the return was October 15, 2007, or just three days after the Department received the envelope in issue from the Taxpayers. The Postal Service receipt also indicated that the envelope was mailed from Point Clear on October 9, 2007 and contained the Taxpayers' 2006 Alabama return. It is undisputed that the Department received an envelope from the Taxpayers in mid-October 2007, but there is no evidence or indications by the Department that it received any document from the Taxpayers at that time. Finally, a taxpayer generally does not submit a document to the Department by certified mail unless it is a return (or an appeal to the Administrative Law Division). Based on the above, there is sufficient circumstantial evidence to find that the envelope mailed by the Taxpayers to the Department in October 2007 contained their 2006 Alabama return.

The overpayment reported by the Taxpayers on their 2006 return was timely claimed as a credit towards their 2007 liability per the Taxpayers' 2006 return filed in October 2007.

The credit for 2007 thus should be allowed. Judgment is entered accordingly.

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

Entered August 3, 2010.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: Duncan R. Crow, Esq.  
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Kim Peterson