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FLORENCE, AL 35633,

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

Taxpayers,

§

DOCKET NO. INC. 12-1036

v.

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

§

### **FINAL ORDER**

This appeal involves a denied refund of 2009 income tax requested by the above Taxpayers, and a \$50 failure to timely file penalty assessed against the Taxpayers for that year.

The Taxpayers e-filed their 2009 Alabama income tax return using the Intuit Turbo Tax e-file system. The Department concedes that it received the e-filed return on April 15, 2010. The Department rejected the return, according to the Department's Answer, "because the electronic return did not identify the source and nature of 'other income' reported by the Taxpayers."

The Taxpayers were unaware that the Department had not accepted the return until the Department notified them in June 2012 that their 2009 return had not been filed. The Taxpayers responded by submitting a paper copy of the return in early July 2012. The return showed a refund due of \$647.

The Department subsequently notified the Taxpayers that their claimed refund was denied because it was not filed within two years of the April 15, 2010 due date of the 2009 return. It also assessed the Taxpayers for the minimum \$50 late filing penalty levied at Code of Ala. 1975, §40-2A-11(a). The Taxpayers appealed.

The Department cites Code of Ala. 1975, §40-2A-7(c)(2)a. in support of its position. That statute provides that if a taxpayer fails to timely file a return, the taxpayer must petition for a refund of any tax paid by withholding or estimated payment during the year within two years from the original due date of the return. The Department contends that because the Taxpayers did not file their 2009 return until July 2012, or more than two years after the April 15, 2010 due date of the return, the refund cannot be granted. I disagree.

The two year statute at §40-2A-7(c)(2)a. does not apply because the Department concedes that the Taxpayers timely filed their 2009 return. “The Department’s records reflect that the Taxpayers electronically submitted a self-prepared 2009 return on April 15, (2010).” Department’s Answer at 1. The return was thus timely filed, even though the Department rejected the return because it did not contain certain information.

Department Reg. 810-3-27.05 is entitled “Requirements for the Alabama Electronic Individual Income Tax Return.” Paragraph (2) provides that “[t]he transmission date of an Alabama electronic individual income tax return will be used to determine timely filing of an electronic return in the same manner that the postmarked date is used to determine timely filing” of a paper return.

If a paper return is postmarked on or before the due date, it is deemed as timely filed, see Code of Ala. 1975, §40-1-45. It is irrelevant that the paper return may contain mistakes or insufficient information. It is still deemed timely filed, even if the taxpayer must later provide the Department with corrected or additional information. Likewise, a timely transmitted electronic return received by the Department is deemed filed on the transmission date, even if the return contains mistakes or insufficient information.

The above result is also supported by Reg. 810-1-6.07, which is entitled “Determining Timely Filing Electronic Returns.” That regulation states in part that “[t]he date and time the taxpayer files the tax return with the electronic return originator shall be the date and time used to determine timely filing of an electronic return.” The fact that the Taxpayers in this case electronically filed the return directly with the Department instead of using an originator is of no consequence. The return was timely.

Because the Taxpayers timely filed their 2009 Alabama return, the \$647 refund in issue was timely claimed and should be issued, plus applicable interest. The \$50 late penalty final assessment is also voided. 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 October 29, 2012.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: Kelley A. Gillikin, Esq. (w/enc.)  
Thomas Johnson  
Kim Peterson