

MARK A. & CATHY J. REGISTER §
P.O. BOX 18799 §
PANAMA CITY, FL 32417, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers, §

DOCKET NO. INC. 12-366

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

Mark A. and Cathy J. Register (jointly "Taxpayers") appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §§40-2A-7(c)(5)a. and 40-2A-7(b)(5)a concerning a denied refund of 2005 income tax and a final assessment of a \$50 late filing penalty for that year, respectively. A hearing was conducted on February 5, 2013. Cathy Register (individually "Taxpayer") attended the hearing. Assistant Counsel Gwendolyn Garner represented the Department.

The Taxpayers have resided in Florida and have filed nonresident Alabama income tax returns since at least 2005.

The Taxpayers filed a 2006 Alabama return in 2007 on which they claimed a credit or estimated payment of \$608 carried over from their 2005 Alabama return.

The Department notified the Taxpayers by letter dated October 23, 2007 that it had no record of the Taxpayers filing a 2005 return or otherwise paying \$608 in that year. The letter indicated that if "your records do show that you have paid the amount claimed on your (2006) return, you should submit a legible copies of the front and back of your canceled check(s) or other positive substantiation" showing that the \$608 had been paid. The Taxpayers responded by attaching a copy of the first page of their 2005 Alabama return to the Department notice and mailing it to the Department on November 1, 2007.

The return showed that the Taxpayers had elected to apply the \$608 overpaid in 2005 as a credit toward their 2006 liability. The Taxpayers did not receive any response from the Department. They consequently assumed that the problem had been handled.

The Taxpayers also filed Alabama returns for 2007 through 2011 on which they claimed a credit carryover of the net overpayment from the prior year. Because the Taxpayers assumed that the Department had allowed them credit for the \$608 carried over from 2005 to 2006, they treated that amount as having been paid when they computed the amount overpaid and carried over in each year.

The Department subsequently notified the Taxpayers in each year from 2008 to 2011 that it had adjusted or reduced the amount carried over as a credit on their returns for those years. The notices did not explain that the returns were adjusted because the Department had not allowed the Taxpayers credit for the \$608 overpayment carried over from 2005 to 2006.

The Taxpayers contacted the Department in October 2011 and asked about the recurring problem. The Department eventually notified the Taxpayers that the Department still had no evidence that the Taxpayers had filed their 2005 Alabama return. The Taxpayers immediately sent the Department a copy of their entire 2005 return.

The Department acknowledged that it received the 2005 return, but notified the Taxpayers that the \$608 overpayment shown on the return could not be refunded or allowed as a credit because it was not timely claimed. The Department also entered a 2005 final assessment against the Taxpayers on November 1, 2011 for the \$50 failure to timely file penalty. The Taxpayers failed to timely appeal that final assessment.

A refund of income tax overpaid by estimated payment must be claimed within two years from the due date of the return for the year in which the estimated payment was made. Code of Ala. 1975, §40-2A-7(c)(2)a. In this case, the Taxpayers, as requested, submitted to the Department the front page of their 2005 Alabama return in November 2007. The return showed that the Taxpayers had elected to carryover and apply the \$608 overpayment from 2005 to their 2006 liability. Although the entire return was not submitted, the partial return submitted in November 2007 was sufficient to notify the Department that the Taxpayers were claiming the \$608 overpayment as a credit toward their 2006 liability. Because the notice was within two years from the due date of the return, the credit was timely claimed.

The Department is authorized to apply any refund due to offset “any outstanding final tax liabilities due and owing by the taxpayer.” Code of Ala. 1975, §40-2A-7(c)(4). The Department should accordingly apply the \$608 refund to offset the unappealed from 2005 final assessment in the amount of \$50, plus applicable interest. The balance should then be refunded to the Taxpayers, plus applicable interest, in due course.

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

Entered June 25, 2013.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Gwendolyn B. Garner, Esq.
Cathy Register
Kim Peterson