

ATOUMANE NDOYE AND
KOLLO KAMARA
6925 HEATHERMOORE LOOP
MONTGOMERY, AL 36117,

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§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers, §

DOCKET NO. INC. 12-941

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

This appeal involves the Department's denial of a 2008 income tax refund requested by Atoumane Ndoye and Kollo Kamara (jointly "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 November 8, 2012. Atoumane Ndoye (individually "Taxpayer") attended the hearing. Assistant Counsel Craig Banks represented the Department.

The Department received the Taxpayers' 2008 Alabama income tax return on May 25, 2012. The return requested a refund of tax overpaid through withholding in the subject year. The Department denied the refund because it had not been claimed within two years of the due date of the return. Code of Ala. 1975, §40-2A-7(c)(2)a.

The Taxpayer claims that his tax preparer, K & S Financial, electronically filed both his 2008 federal and Alabama returns by the April 15, 2009 due date. He submitted a paper copy of what he claims was the electronically filed Alabama return, which is dated April 3, 2009. The Taxpayer testified that the IRS promptly issued him a refund, but that the IRS later adjusted the return and required him to repay some of the refund.

The Taxpayer inquired with his tax preparer in 2009 when he did not receive his Alabama refund after several months. The preparer told him that the State was having

money problems, and that his refund would be delayed. After several years, the Taxpayer had his preparer complete a 2008 paper return, which, as indicated, he filed with the Department in May 2012. The Department denied the refund as untimely.

The Department's records show that the Taxpayer has timely filed his Alabama returns since at least 2005, except for the year in issue. I believe the Taxpayer's testimony that he asked his tax preparer before the due date of the 2008 return to prepare and file his State and federal returns for the year. Unfortunately, the Department never received the State return. Either the preparer inadvertently failed to submit the Alabama return to the IRS with his federal return, or the IRS rejected the federal return, in which case the IRS would have notified the preparer that the return had been rejected. But regardless of what happened, the Taxpayers' 2008 return was not received by the Department until May 2012. The copy of the 2008 return dated April 3, 2009 also does not show a declaration control number indicating that it was accepted by the IRS.

I sympathize with the Taxpayers, but Alabama law requires that the Department's denial of the refund must be affirmed.

Department Reg. 810-1-6.07 provides 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." If the Taxpayer can obtain some document from his tax preparer showing that he filed the return with the preparer or that the preparer transmitted the return to the IRS by the due date, he may apply for a rehearing and submit the document within 15 days. Otherwise, this Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered December 14, 2012.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Kelley A. Gillikin, Esq.
Atoumane Ndoeye & Kollo Kamara
Kim Peterson