

STATE OF ALABAMA,
DEPARTMENT OF REVENUE,

§ STATE OF ALABAMA
DEPARTMENT OF REVENUE
§ ADMINISTRATIVE LAW DIVISION

V.

§ DOCKET NO. INC.85-183

GARY E. & SALLY S. SMITH §
1855 Nottingham Drive
Birmingham, AL 35216, §

Taxpayers. §

ORDER

This case involves a preliminary assessment of income tax entered by the Revenue Department against Gary E. and Sally S. Smith (hereinafter "Taxpayers") for the calendar year 1979. A hearing was conducted in the matter on September 11, 1986. Mr. Gary Smith was present and represented the Taxpayers. The Revenue Department was represented by assistant counsel Mark Griffin. Based on the evidence submitted by the parties, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The Taxpayers' joint 1979 Alabama income tax return was received by the Revenue Department on October 17, 1980. The Revenue Department instituted audit proceedings, and on May 17, 1983 mailed to the Taxpayers a waiver form by which the statute of limitations relative to the Taxpayer's 1979 liability was extended until October 17, 1984. The Taxpayers admit that they signed the waiver and returned it to the Department, after which it was completed by the signature of Commissioner James C. White, Sr. on August 11,

1983.

The next year, the Revenue Department sent the Taxpayers another waiver form, dated August 15, 1984, so as to extend the statute until October 17, 1985. At the hearing in this matter, the Taxpayers presented a copy of a waiver form dated August 15, 1984 which was signed by the Taxpayers only. Mr. Smith argued that said waiver extending the statute until October 17, 1985 had never been submitted to the Department and that the Taxpayers had not signed any other waiver extending the statute of limitations past October 17, 1984. However, the Revenue Department submitted into evidence the original of a waiver dated August 15, 1984 which was signed by the Taxpayers, and also by the Commissioner of Revenue on October 1, 1984. That waiver extended the statute of limitations through October 17, 1985. The Department put on testimony indicating that the waiver, signed by the Taxpayers, had been received by the Department through the mail and that in the normal course of business had been forwarded to the Commissioner of Revenue for completion. Upon examination of the waiver, Mr. Smith admitted that the signatures thereon were those of he and his wife.

On July 26, 1985, the Revenue Department entered the preliminary assessment in issue. At the hearing, the Taxpayers did not raise any substantive objections to the assessment. The only issue argued by the Taxpayers was that the statute of limitations had run on their 1979 liability. As indicated above, the Taxpayers'

argument is based on their assertion that they had not filed a waiver with the Department extending the statute beyond October 17, 1984.

The Department argues that the Taxpayers did in fact sign a waiver extending the statute until October 17, 1985. The Department also contends that because the audit showed the Taxpayers had failed to report more than twenty-five percent of their income, under Code of Alabama 1975, §40-18-45(a), the statute of limitations concerning the Taxpayers' 1979 liability was five years, and consequently, even without the waivers the original statute period ran until October 17, 1985.

CONCLUSIONS OF LAW

Code of Alabama 1975, §40-18-45(a) provides generally that an assessment of income tax must be entered within three years from the date the return was filed. In this case, the Taxpayers filed their 1979 return on October 17, 1980. Within three years from that date, the Taxpayers signed a waiver extending the assessment deadline until October 17, 1984. Further, the evidence is clear, although muddled by the inconsistent testimony of Mr. Smith, that the Taxpayers also signed a second waiver extending the statute until October 17, 1985. Consequently, the subject preliminary assessment entered by the Department on July 26, 1985 was properly entered within the statute of limitations period set out in §40-18-45(a).

Further, even if a second waiver extending the statute of limitations until October 17, 1985 had not been filed, because the Taxpayers had failed to report more than twenty-five percent of their gross income on their return, under §40-18-45(a) the statute of limitations for entering an assessment was, as a matter of law, five years from the date of the return. Consequently, clearly the Department entered the preliminary assessment in issue within the time limitations of §40-18-45(a).

Based on the above, the Revenue Department is hereby directed to make final the preliminary assessment in issue, with applicable interest as required by law.

Done this 10th day of November, 1986.

BILL THOMPSON
Chief Administrative Law Judge