

JACK W. HOWARD  
4749 Appletree Lane  
Tuscaloosa, AL 35405,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 01-248

### FINAL ORDER

The Revenue Department assessed 1998 income tax against Jack W. Howard (ATaxpayer@). The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, § 40-2A-7(b)(5)a. A hearing was conducted on May 8, 2001. The Taxpayer attended the hearing. Assistant Counsel Mark Griffin represented the Department.

The issue in this case is whether the Department properly assessed the Taxpayer for the tax, penalty, and interest included in the final assessment.

The Taxpayer filed his 1998 Alabama income tax return on August 18, 1999. The return reported tax due of \$13,675. The Taxpayer failed to pay the amount due with the return.

The Department claims it mailed the Taxpayer a billing letter for the amount due. The Taxpayer claims he never received a billing letter. In any case, the Department entered the final assessment in issue against the Taxpayer on March 13, 2001. The final assessment included the tax due, the one percent per month failure to timely pay penalty levied at Code of Ala. 1975, § 40-2A-11(b), and interest as required by Code of Ala. 1975, § 40-1-44. The penalty and interest were computed from the April 15, 1999 due date of the return until the date the final assessment was entered, March 13, 2001. The total penalty assessed was \$3,282. The statutory interest rate was eight percent from April 15, 1999 through March 31, 2000, and nine

percent from April 1, 2000 through March 13, 2001. The total interest assessed was \$1,847.33.

The Taxpayer makes the following arguments:

- (1) The Department failed to notify him that a final assessment was imminent;
- (2) Notices were mailed to an incorrect address;
- (3) The Department failed to explain how the interest and penalty included in the final assessment was computed; and,
- (4) The Department has not allowed him an opportunity to settle the debt by making partial payments.

Concerning the Taxpayer's first argument, when a tax due as reported by a taxpayer is undisputed, the Department may immediately enter a final assessment for the payment of the tax . . . , plus applicable penalty and interest. . . @ Code of Ala. 1975, § 40-2A-7(b)(1)b. The Department thus was not required to notify the Taxpayer before entering the final assessment in issue. The Taxpayer was certainly aware of the unpaid tax liability, and should have anticipated that the Department would assess him for the tax due. Prior notice was thus not required or necessary.

Concerning the Taxpayer's claim that notices were mailed to an incorrect address, the Taxpayer listed his address on his 1998 return as 318 Woodland Forest #5, Tuscaloosa, Alabama 35405. That is the address on the final assessment, and the address to which the final assessment was mailed. The United States Postal Service at some point changed the Taxpayer's address to 4749 Appletree Lane, Tuscaloosa, Alabama 35405. That is the address the Taxpayer put on his notice of appeal, and also the address to which all correspondence was mailed by the Administrative Law Division. All documents were thus properly mailed to the Taxpayer at the correct address.

The Taxpayer next complains that the Department failed to explain the interest and penalty included in the final assessment. As indicated, interest is required by statute at § 40-1-44. The rate is tied to the federal rate established by 26 U.S.C. § 6621. The Department thus correctly assessed interest at the statutory rates set out above, from the due date of the return through the date the final assessment was entered. Interest also continues to accrue at the current rate of eight percent.

The penalty assessed by the Department is the failure to timely pay penalty levied at § 40-2A-11(b). That section levies a one percent per month penalty if a taxpayer fails to pay the tax due as reported on a return, which applies in this case. The monthly penalty applicable to the Taxpayer's underpayment was one percent of \$13,675 per month, or \$136.75 per month.

The Taxpayer claims the penalty should be waived. However, he has failed to establish reasonable cause why the penalty should be waived. The Department's failure to notify the Taxpayer beforehand that it intended to assess him on his no money return does not constitute reasonable cause to waive a penalty. Nor does the Department's failure to notify the Taxpayer of the specific rate of interest charged, or the penalty assessed.

Finally, the Taxpayer claims the Department failed to give him an opportunity to make partial payments. Installment payments are authorized by statute. Code of Ala. 1975, § 40-2A-4(6)(a). That statute provides, however, that installment agreements can only be entered into regarding a tax that has been finally assessed, and not appealed. The Department thus was not authorized to enter into a partial payment agreement with the Taxpayer before the final assessment in issue was entered.

The final assessment is affirmed. Judgment is entered against the Taxpayer for 1998 tax, penalty, and interest of \$18,804.33. Additional interest is also due from the date of entry of the final assessment,

March 13, 2001. A copy of this Final Order has been mailed to the Department's Collection Services Division, which will contact the Taxpayer in due course concerning payment of the amount due. The Taxpayer may also telephone the Collection Services Division at 334-353-7852 concerning payment.

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

Entered May 10, 2001.