

THEATIS & MARIE E. BELL  
215 South Park Road  
Birmingham, AL 35211,

Taxpayers,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 01-273

**FINAL ORDER DENYING DEPARTMENT'S  
APPLICATION FOR REHEARING**

The Department has applied for a rehearing in this case, arguing that the Administrative Law Division improperly waived the failure to timely file and pay penalties assessed against the Taxpayers for the 1995 tax year. The application is denied for the reasons explained below.

Any penalty levied in Title 40, Code of Ala. 1975, may be waived for reasonable cause. Code of Ala. 1975, § 40-2A-11(h). Whether reasonable cause exists to waive a penalty must be decided on a case by case basis.

Rev. Proc. 97-003 defines "reasonable cause" to include, but is not limited to, a taxpayer's inability to obtain needed records or a non-recurring, honest mistake. The Taxpayers' house burned in 1996, which destroyed the records they needed to timely file their 1995 return. There is also no evidence that the Taxpayers have ever otherwise failed to timely file their Alabama return. Under those circumstances, there is reasonable cause to waive the penalties in issue.

The Department argues that because the negligence penalty was not waived, then none of the penalties should have been waived. If anything, however, the negligence penalty also

should have been waived. It was not.

The Final Order previously entered in this case is affirmed. This Final Order Denying Department's Application for Rehearing may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, ' 40-2A-9(g).

Entered August 7, 2001.