STATE OF ALABAMA, DEPARTMENT OF REVENUE, vs. HARRY & FANNIE YOUNGBLOOD P.O. Box 635 Tuskegee, AL 36083, Taxpayers.	§ § § § § §	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION DOCKET NO. INC. 92-307

FINAL ORDER

The Revenue Department denied a 1990 income tax refund claimed by Harry and Fannie Youngblood (Taxpayers). The Taxpayers appealed to the Administrative Law Division and a hearing was conducted on February 16, 1993. CPA James Wilson, Sr. and CPA Greg Sellers appeared for the Taxpayers. Assistant counsel Claude Patton represented the Department. The relevant facts are undisputed.

The Taxpayers live in Tuskegee and their 1991 Alabama income tax return was prepared by their CPA in Montgomery. The Taxpayers reported a loss of $24,301.70 on the 1991 return which they intended to carry back for a deduction in 1990. Consequently, along with the 1991 return the CPA also prepared an amended 40X 1990 return and a form NOL-85 on which the 1991 loss was carried back to 1990. The completed 1991 return, the 1990 amended return, and the form NOL-85 were all mailed together to the Taxpayers in Tuskegee with instructions for them to sign and then mail the documents to the Revenue Department in Montgomery.

The Taxpayers signed both returns on August 6, 1992 (the Taxpayers had been given an extension to file to August 15), but in addition they also erroneously signed Part III on form NOL-85. Part III is an election to forfeit the carryback provision, and by signing the Taxpayers inadvertently elected to forfeit any carryback and use the loss as a carryforward only. The election is provided for by statute at Code of Ala. 1975, §40-18-15(16)d., which also provides that once made the election is irrevocable.[1]

The Department agrees that the Taxpayers mistakenly signed the election, but argues that the election once made is irrevocable and cannot now be revoked or changed by amended return or otherwise.

The election is irrevocable to prevent a taxpayer from electing to use a loss as a carryforward only but later changing his mind and attempting to carry the loss back to a previous year. The Taxpayers in this case at all times intended to carry the 1991 loss back to 1990, as evidenced by the fact that the 1991 return, the 1990 amended return and the form NOL-85 were all signed by the

[1] Code of Ala. 1975, §40-18-15(16)d. is modeled after its federal counterpart, 26 USCA §172(b)(3)(C). For a short history of why that section was included in the federal law, see Young v. C.I.R., 783 F.2d 1201, at 1203.

Taxpayers on the same day and filed with the Department at the same time. The Taxpayers clearly manifested their intent to carry the loss back and should not be bound by their inadvertent signing of the election.

The Department has cited a prior case decided by the Administrative Law Division in October, 1991, Docket No. INC. 91-178. That case involved essentially the same facts as this case and I ruled that the election was binding even though it had been mistakenly signed.

On review, I believe my decision in the prior case was wrong. Complying with the tax laws is difficult enough under the best of circumstances, and if at all possible a taxpayer should not be bound by an obviously inadvertent mistake on his return, especially where the mistake involves a provision intended to benefit the taxpayer.

The Taxpayers should be allowed to carry the 1991 loss back to 1990. The resulting refund of $855.00 plus applicable interest should be issued to the Taxpayers.

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

Entered on March 1, 1993.

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BILL THOMPSON
Chief Administrative Law Judge