

STATE OF ALABAMA,
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

vs.

§

DOCKET NO. INC. 93-266

MICHAEL S. AND DEBORAH A. HAMRIC
P. O. Box 851
Columbus, GA 31902,

§

§

Taxpayers.

§

FINAL ORDER

The Revenue Department denied a refund of 1989 Alabama income tax filed by Michael S. and Deborah A. Hamric. Deborah A. Hamric (Taxpayer) appealed to the Administrative Law Division and a hearing was conducted on October 7, 1993. The Taxpayer appeared at the hearing. Assistant counsel Beth Acker represented the Department.

The issue in this case is whether the Taxpayer timely requested a refund of overpaid 1989 income tax.

The Taxpayer and her husband filed a joint 1989 Alabama return on March 28, 1990 and paid the tax due of \$1,221.87. The Taxpayer subsequently filed an amended return on April 15, 1993 requesting a refund of \$613.00. The Department accepted the amended return as filed but denied the refund because the petition (return) had not been timely filed.

Prior to October, 1992, §40-18-43 required that a refund of income tax must be requested within three years from payment of the tax. Thus, under §40-18-43, the Taxpayer had three years from when

the tax was paid, or until March 28, 1993, to request a refund of the overpaid 1989 tax. She failed to do so by that date and thus the refund was properly denied by the Department.

Section 40-2A-7(c)(2)a. was adopted effective October 1, 1992.

However, that section does not help the Taxpayer because it requires that a petition for refund must be filed within three years from when the return was filed (or two years from payment).

Thus, because the Taxpayer filed her return and paid the tax on March 28, 1990, the statute of limitations under both §40-18-43 and §40-2A-7(c)(2)a. expired on March 28, 1993.

Under federal law a return filed before the due date is considered filed on the due date. 26 U.S.C. §6513. Thus, the Taxpayer's return would have been deemed filed for federal purposes on April 15, 1990, in which case the amended return filed on April 15, 1993 would have been timely filed within three years for refund purposes.

The drafters of §40-2A-7(c)(2)a. intended to adopt the federal statute of limitations for refund purposes. For that reason I would like to hold that §6513 should be followed and the Taxpayer should be allowed a refund. Unfortunately, §6513 was not adopted into Alabama law and without specific statutory authority, I cannot hold contrary to the plain wording of §40-2A-7(c)(2)a. The Taxpayer failed to petition for a refund within three years from

when the tax was paid or within three years from when the return was actually filed, and thus her refund must be denied.

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

Entered on October 15, 1993.

BILL THOMPSON
Chief Administrative Law Judge