

WILLIAM D. & OLIVIA MARTIN  
8724 Edgehill Drive S.E.  
Huntsville, AL 35803,

Taxpayers,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 00-251

### FINAL ORDER

This case involves a denied refund of 1996 income tax paid by the Taxpayers through withholding. The Taxpayers filed their 1996 Alabama return on November 22, 1999. The return claimed a refund of the tax in issue. The Department denied the refund because it was not timely claimed within two years of the due date of the return, as required by Code of Ala. 1975, § 40-2A-7(c)(2)a.

The Taxpayers appealed to the Administrative Law Division pursuant to Code of Ala. 1975, § 40-2A-7(c)(5)a. A hearing was conducted on August 30, 2000 in Birmingham, Alabama. William Martin attended the hearing. Assistant Counsel LaRonica Lightfoot represented the Department. The Administrative Law Division has held the case in abeyance pending a review by the Department's Taxpayer Advocate.

The Taxpayers claim the refund should be granted because the Department notified them in a 1992 letter that a refund could be claimed within three years. Unfortunately for the Taxpayers, Alabama law is contrary to their position.

Before 1995, the statute of limitations for claiming a refund of income tax was three years from when the return was filed, or two years from when the tax was paid, whichever was later. Section 40-2A-7(c)(2)a. Under that language, the period for claiming a refund of income tax paid by withholding or estimated payments was open-ended because a taxpayer could file a return at any time (three, five, ten, or more years

late), and still obtain a refund.

To close the loophole, the Alabama Legislature enacted Act 95-607 in 1995. That Act amended ' 40-2A-7(c)(2)a. to its current language. Under current law, if a taxpayer pays income tax by withholding or estimated payments, but fails to timely file a return, the taxpayer has two years from the original due date of the return to file a return and claim a refund.

It is undisputed that the Taxpayers in this case failed to file their 1996 return and claim a refund within two years from the due date of the return. Consequently, the refund cannot be granted under current Alabama law.

I sympathize with the Taxpayers because they relied on the Department's 1992 letter indicating that a refund could be claimed within three years. However, that letter was based on pre-1995 law, and thus no longer applies. The fact that the Taxpayers were unaware that the statute had been changed in 1995 does not help them. Ignorance of the law is no excuse. Alabama law is also clear that the Department cannot be estopped from assessing a tax or denying a refund because of misleading information provided by a Department employee. *Community Action Agency of Huntsville, Madison County, Inc. v. State*, 406 So.2d 890 (Ala. 1981).

As indicated, the case was submitted to the Department's Taxpayer Advocate for review. The Taxpayer Advocate has responded that he is also unable to assist the Taxpayers.

The 1996 refund was properly denied by the Department.

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

Entered May 14, 2001.

