

RONALD N. & KATHLEEN ASHLEY  
5467 Oakmont Drive  
Pace, FL 32571,

Taxpayers,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 98-160

### FINAL ORDER

The Revenue Department denied a refund of 1993 income tax requested by Ronald N. & Kathleen Ashley (ATaxpayers@). 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 May 19, 1998. The Taxpayers represented themselves. Assistant Counsel Antoinette Jones represented the Department.

The issue is whether the Taxpayers' 1993 refund claim is barred by the statute of limitations at Code of Ala. 1975, ' 40-2A-7(c)(2)a. The specific issue is whether Act 95-607, which amended ' 40-2A-7(c)(2)a., effective July 31, 1995, should be applied to bar a refund of tax paid by the Taxpayers through withholding in 1993.

The Taxpayers paid Alabama income tax through withholding in 1993. The Taxpayers failed to file their 1993 Alabama return until January 1997. The return claimed a refund of the tax paid through withholding. The Department denied the refund because it was not timely claimed. The Taxpayers appealed.

Before Act 95-607, ' 40-2A-7(c)(2)a. allowed taxpayers to petition for a refund within three years from the date the return was filed, or two years from payment

of the tax, whichever was later. That statute contained a loophole because it allowed taxpayers to obtain a refund of tax paid through withholding at any time, even if they filed their income tax return years after its due date.

Act 95-607 amended ' 40-2A-7(c)(2)a. to close the loophole. Specifically, ' 40-2A-7(c)(2)a., as amended, now requires a taxpayer to file a return and claim a refund of tax paid through withholding within two years from the original due date of the return.

The Taxpayers argue that the pre-Act 95-607 statute should apply to any tax paid before the effective date of the Act, in which case they would be entitled to a refund of the tax paid by withholding in 1993. I disagree.

The Alabama Supreme Court stated the general rule concerning the retrospective effect of a statute in State v. City of Anniston, 381 So.2d 26 (1980), as follows:

It is true as a general rule that statutes will not be construed to have retrospective effect unless the language of the statute expressly indicates the legislature so intended. Baker v. Baxley, 348 So.2d 468 (Ala. 1977); Mobile Housing Board v. Cross, 285 Ala. 94, 229 So.2d 485 (1969). Remedial statutes, or those relating to remedies or modes of procedure, which do not create new rights or take away vested ones, are not within the legal conception of retrospective laws, however, and do operate retrospectively, in the absence of language clearly showing a contrary intention. Sills v. Sills, 246 Ala. 165, 19 So.2d 521 (1944); Harlan v. State, 31 Ala.App. 478, 18 So.2d 744 (1957); A statute of limitations has generally been viewed as a remedial statute, Henry and Wife v. Thorpe, 14 Ala. 103, (1848), and the statute of limitations

in effect at the time the suit is filed, as opposed to one in effect at the time of the accrual of the cause of action, has been held to apply unless the later statute clearly states the contrary. Webster v. Talley, 251 Ala. 336, 37 So.2d 190 (1948); Doe ex dem. Trotter v. Moog, 150 Ala. 460, 43 So. 710 (1907). This is true whether the later statute extends or limits the time within which a cause of action may be brought, for it has frequently been held that the legislature can establish a new limitation where none existed before and make it applicable to a cause of action against which there was no such statute when the right was created, and it may also so change an existing statute and shorten periods of limitation, provided that a reasonable time is allowed for the action to be brought. National Surety Co. v. Morgan, 20 Ala.App. 42, 100 So. 460, judgment reversed, Ex parte Morgan, 211 Ala. 360, 100 So. 462, (1924); Cronheim v. Loveman, 225 Ala. 199, 142 So. 550 (1932).@  
State v. City of Anniston, at 29.

Act 95-607 clearly shortened the statute for claiming refunds of tax paid by withholding. As noted in City of Anniston, however, that is allowable if a reasonable time is allowed for a refund to be claimed.

Act 95-607 perhaps should have provided taxpayers with a grace period for claiming refunds of tax paid before the effective date of the Act. In practical effect, however, the Taxpayers had a reasonable time after the effective date of Act 95-607 to claim a refund of the tax overpaid in 1993.

Act 95-607 allowed the Taxpayers two years from the due date of their 1993 return, or until April 15, 1996, to file a 1993 return and claim a refund. The Taxpayers thus had eight and one-half months after the July 31, 1995 effective date of Act 95-607 to claim a refund. That period certainly constituted a reasonable time within

which the Taxpayers could have claimed a refund.

It should also be remembered that the Taxpayers were under as a statutory duty to file their 1993 return by the April 15, 1994 due date. Code of Ala. 1975, ' 40-18-27. They failed to do so. They cannot now blame the Department or Act 95-607 for their negligent failure to timely file a 1993 return and claim any refund due.

The Department's denial of the Taxpayers' 1993 refund petition is affirmed.

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

Entered August 18, 1998.

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BILL THOMPSON  
Chief Administrative Law Judge

BT:ks

cc: Antoinette Jones, Esq.  
Ronald N. & Kathleen Ashley  
Kim Herman (426-82-5310)