

WILLIAM J. & GEORGIA W. SCOTT §
2100 SOUTHWINDS CIRCLE §
BIRMINGHAM, AL 35244, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers, §

DOCKET NO. INC. 04-441

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department partially denied income tax refunds claimed by William J. and Georgia W. Scott (together "Taxpayers") for 1999, 2000, and 2001. 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 October 14, 2004. William J. Scott (individually "Taxpayer") attended the hearing. Assistant Counsel David Avery represented the Department.

The Department notified the Taxpayers on January 9, 2003 that it intended to audit their 1999, 2000, and 2001 Alabama income tax returns. Later in January 2003, the Department and the Taxpayers executed a waiver extending until September 30, 2003 the statute of limitations for assessing tax or issuing refunds concerning the 1999 tax year.

The Taxpayers provided various records to the Department in late January 2003. The Department reviewed the records and mailed the Taxpayers a preliminary audit report in April 2003. The report indicated that the Taxpayers owed additional tax, penalty, and interest of \$11,536.47.

The Taxpayers objected to the audit report and provided additional records to the Department. The Department subsequently issued a revised audit report in August 2003 indicating that the Taxpayers were due a refund of \$2,132.37. The Taxpayers again

objected.

The Department subsequently requested that the Taxpayers execute another waiver extending the statute of limitations for assessing tax or issuing refunds until April 15, 2004. However, the Taxpayers only agreed to waive the statute through December 31, 2003. They also submitted more records to the Department.

The Department again revised the audit and notified the Taxpayers on September 24, 2003 that they were due a refund of \$6,577.70. The Department sent the Taxpayers another letter on September 25, 2003 indicating that the refund due was \$6,601.23. The September 24 and September 25 letters both stated that “[a]ll adjustments will be reviewed by Audit Verification and are subject to change.” The Taxpayers agreed with the refund amount shown on the September 25 letter.

The Department’s Audit Verification Section reviewed the preliminary audit and notified the Taxpayers in February 2004 that it had reduced the refund to \$4,531. The Department issued the Taxpayers a refund in that amount in April 2004. It also notified the Taxpayers that their previously requested refunds had been partially denied. The Taxpayers appealed.

The Taxpayers do not contest the Department’s technical audit adjustments. Rather, they claim they are due an additional refund of \$2,070.23, which is the difference between the refund of \$6,601.23 they agreed to in September 2003 and the \$4,531 later refunded by the Department. They argue they are due the additional refund because the audit could not be adjusted after the statute of limitations concerning the 1999 tax year expired on December 31, 2003.

This is a refund case. Code of Ala. 1975, §40-2A-7(c)(2)a. specifies that a petition for refund must be filed within three years from the date the return was filed, or two years from the date of payment of the tax, whichever is later. However, after a petition is timely filed, as in this case, the statute of limitations at §40-2A-7(c)(2)a. becomes irrelevant. The Department may have been time-barred from assessing the Taxpayers for additional tax after the statute expired on December 31, 2003, but it was not prohibited from adjusting the amount of the refund due the Taxpayers. That is, the running of the statute of limitations within which a taxpayer must petition for a refund does not bar the Department from thereafter reviewing and adjusting the petition. The Department also notified the Taxpayers in its September 24 and 25 letters that the audit would be reviewed and that the refund amount was “subject to change.”¹

The Department’s issuance of the \$4,531 refund to the Taxpayers for all three years 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 October 26, 2004.

BILL THOMPSON
Chief Administrative Law Judge

¹ The Taxpayer complained at the October 14 hearing that he should not have agreed to any waivers. However, because this is a refund case, signing the waivers only benefited the Taxpayers by giving them a longer period within which they could claim a refund.