

STATE OF ALABAMA,
DEPARTMENT OF REVENUE,

vs.

SHOE STATION, INC.
450 Bel Air Blvd.
Mobile, AL 36606,

Taxpayer.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 93-233

FINAL ORDER

This case involves a disputed final assessment of income tax and a denied refund of income tax involving the year 1987. The Taxpayer, Shoe Station, Inc., appealed to the Administrative Law Division and the matter was submitted on a joint stipulation of facts. CPA Kim McConkey represented the Taxpayer. Assistant counsel Duncan Crow represented the Department.

Although this case was submitted on a joint stipulation of facts, I am unsure about the facts and issues in dispute. The Department is claiming additional tax through a final assessment for 1987, whereas the Taxpayer is claiming a refund for 1987. Apparently the issue is decided one way or the other depending on whether an amended 1987 return was timely filed by the Taxpayer.

The facts, as I understand them, are as follows:

The Taxpayer filed its original 1987 Alabama income tax return on March 16, 1988. The Internal Revenue Service (IRS) started auditing the Taxpayer's 1987 and 1988 federal returns in August, 1989. The Taxpayer signed a federal waiver in December, 1990 allowing the IRS until June 15, 1992 to assess additional tax for 1987. The IRS audit was settled pursuant to a Closing Agreement

dated March 27, 1991.

The Taxpayer subsequently filed an amended 1987 Alabama return on May 16, 1991. The amended return included additional income of \$64,337.00 resulting from the IRS audit, and also an additional federal income tax deduction of \$175,773.00. I assume that the additional federal tax deduction resulted from additional federal tax paid as a result of the IRS audit. The end result of the amended return was a net reduction of \$110,836.00 in taxable income.

The Department apparently accepted the additional income reported of \$64,337.00, but disallowed the federal tax deduction based on its position that the amended return claiming the refund was not timely filed. The Department thus (I assume) entered the final assessment in issue based on the additional reported income.

I assume that if the amended return was timely filed and the additional federal income tax deduction should be allowed, then the refund should be granted and the final assessment dismissed. Conversely, if the amended return was not timely filed, then the refund should be denied and the final assessment should be upheld.

Prior to October 1992, the statute of limitations for making State income tax adjustments based on federal changes was governed by Code of Ala. 1975, §40-18-45. That section was somewhat confusing because paragraph (b)(1) gave the Department three years to assess tax based on federal changes, but paragraph (b)(2)

appeared to set the statute at one year. In any case, paragraph (b)(3) governed refunds resulting from IRS changes, and that provision allowed a taxpayer one year after a final determination of IRS changes within which to claim a refund. For purposes of the one year rule, it was irrelevant that the normal three year statute for claiming refunds under §40-18-43(a) had already expired.

The Closing Agreement accepted by the IRS on March 27, 1991, constituted a final determination of IRS changes. Thus, the Taxpayer timely filed an amended return and claimed a refund within one year of that date, on March 16, 1991.

If the above question is the only issue in dispute, then because the amended return was timely filed, the refund claimed on the amended return should be granted, and (I assume) the final assessment in issue should be dismissed.

However, a sub-issue may be whether or not the federal income tax deduction claimed on the amended return resulted from the federal audit changes. That question is relevant because a claim for refund outside of the normal three year statute can only be based on changes resulting from the IRS audit. Thus, if the Taxpayer could have claimed the federal tax deduction on its original return but inadvertently failed to do so, the deduction cannot be allowed on the amended return because the amended return was filed outside of the normal three year statute. In that case, the Department properly disallowed the federal tax deduction and

assessed additional tax on the additional income resulting from the IRS audit. As stated, the federal tax deduction is being allowed on the assumption that it resulted from additional federal tax paid as a result of the IRS audit.

Based on the above reasoning, the refund in issue should be granted and the final assessment in issue should be dismissed. Again, I am not certain that I have correctly stated the facts of the case, or the basis for which either the claimed refund was denied or the final assessment entered. If my facts are incorrect, then the Department should explain by filing an application for rehearing within the allowed 15 days. The Taxpayer will be allowed an opportunity to respond.

If the facts as stated are correct, but the Department thinks my legal conclusions are wrong, then the Department may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered on November 8, 1993.

BILL THOMPSON
Chief Administrative Law Judge