

WALTER W. & SHIRLEY J. STEPHENS	§	STATE OF ALABAMA
1415 Dogtown Road S.E.		DEPARTMENT OF REVENUE
Ft. Payne, Alabama 35967,	§	ADMINISTRATIVE LAW DIVISION
Taxpayers,	§	DOCKET NO. INC. 96-127
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

FINAL ORDER
DENYING APPLICATION FOR REHEARING

The Taxpayers paid \$7,718.50 in Alabama income tax in 1992. \$2,718.50 was paid through withholding, and \$5,000.00 as a credit carried over from 1991. They filed their 1992 return in October 1995 showing a liability of \$948.00, which left an overpayment of \$6,770.50. The Taxpayers requested that \$1,770.50 of the overpayment be refunded to them, and that the balance of \$5,000.00 be carried over to 1993. The Department denied both the refund and the credit as untimely claimed. The Taxpayers appealed to the Administrative Law Division. A hearing was conducted on April 9, 1996. A Final Order was entered on April 12, 1996. The Department timely applied for a rehearing on April 29, 1996.¹

The Final Order held, in substance, that a portion of the \$2,718.50 withheld during 1992 should be applied to satisfy the Taxpayers' 1992 liability of \$948.00. However, the balance of the amount withheld could not be refunded or credited because it was not claimed within two years from the due date of the 1992 return

¹The 15th day for applying for a rehearing fell on Saturday, April 27, 1996. The Department thus had until the next business day, Monday, April 29th, to apply for a rehearing. See Code of Ala. 1975, §40-2A-9(f).

as required by Code of Ala. 1975, §40-2A-7(c)(2)a.

The Final Order also held that the \$5,000.00 carried over as a credit from 1991 to 1992 was "paid" when the 1992 Alabama return was filed on October 12, 1995. Consequently, that amount was timely claimed, and should be refunded or allowed as a credit to 1993.

Since at least 1988, the Taxpayers overpaid their Alabama income tax in each year and carried over a portion of the overpayment as a credit to the next year. The thrust of the Department's application for rehearing, as I understand it, is that the amounts carried over as a credit from year to year were not "paid" in the next year. Rather, the Department argues that the credit claimed in each year was a continuous roll-over of the same overpayments initially made in 1988 through 1990. The Department explained its position on page three of its application, as follows:

Based on this background, the \$5,000.00 carryforward (to 1992) was paid by and consisted of (1) the \$3,653.48 that was withheld from the Taxpayer's wages in 1988 that was put into the "carryforward" by their 1988 return plus (2) the \$1,163.30 that was withheld from the Taxpayer's wages in 1989 that was put into the "carryforward" by their 1989 return and (3) the \$183.22 in 1990 withholdings which was added to the "carryforward" in the 1990 return. Each of these payments were made more than two years prior to the date the refund request was filed.

The Department thus argues that because the \$5,000.00 credit carried over from 1991 to 1992 was actually paid in 1988, 1989, and 1990, it cannot now be refunded. I disagree.

As explained in the Final Order, the credit amount carried

over to each subsequent year was "paid" when the subsequent year's return was filed by the Taxpayers. The credit was applied as tax paid in that year, and lost its identity as a credit from a prior year at that time. The process then repeated itself. In short, the amount paid by credit in 1992 is not the same tax initially overpaid in 1988 through 1990, as argued by the Department. Each credit carried over to a subsequent year constitutes tax paid in that subsequent year.

In the alternative, the Department also claims that the Taxpayer's 1992 liability of \$948.00 should have been satisfied by the credit carried over from 1991, not the tax withheld during 1992. If so, then the \$5,000.00 credit carryover should be reduced by the \$948.00. Again, I disagree.

For statute of limitations purposes, Code of Ala. 1975, §40-2A-7(c)(2)b. provides that taxes paid through withholding shall be deemed paid on the due date of the subject year return. Department Reg. 810-3-43-.02, repealed November 6, 1993, and Reg. 810-14-1-.19(3), effective August 19, 1993, also both provide that tax withheld during the year shall be deemed paid on the due date of the subject year return. Based on the above statute and regulations, the tax withheld from the Taxpayers' wages during 1992 was deemed paid on April 15, 1993. The amount carried over as a credit from 1991 to 1992 was not "paid" until the 1992 return was filed in October 1995. Consequently, the tax withheld should first be applied to satisfy the Taxpayers' liability. The Department

offers no statutory or case law authority to the contrary.

The United States Supreme Court held in Badaracco v. CIR, 104 S.Ct. 756, at page 761 (1986), that "limitations statutes barring the collection of taxes otherwise due and unpaid are strictly construed in favor of the Government", citing Lucia v. U.S., 474 F.2d 565, 570 (1973). It follows that conversely, a statute of limitations barring a refund of overpaid taxes otherwise due should be construed for the taxpayer.

It is undisputed that the Taxpayers overpaid the amounts in question. Consequently, in case of doubt, the statute of limitations barring a refund of the overpayment should be construed for the Taxpayers.

The Department notes that it never imposed any late filing penalties against the Taxpayers. Because no additional tax was due in any year, only the minimum \$50.00 failure to timely file penalty could have been assessed under Code of Ala. 1975, §40-2A-11(a). The Department may impose that or any other applicable penalty in the future, unless there is reasonable cause not to do so.

The above considered, the Final Order is affirmed as entered.

This Final Order Denying Application for Rehearing may be appealed to circuit court within the time provided in Code of Ala. 1975, §§40-2A-9(f) and (g).

Entered May 9, 1996.

BILL THOMPSON

Chief Administrative Law Judge