

AMERICAN EQUITY INVESTMENT §  
LIFE INSURANCE COMPANY §  
500 WESTOWN, STE 440 §  
WEST DES MOINES, IA 50266, §

STATE OF ALABAMA  
ALABAMA TAX TRIBUNAL

DOCKET NO. BPT. 15-612

Taxpayer, §

v. §

STATE OF ALABAMA §  
DEPARTMENT OF REVENUE. §

**FINAL ORDER DENYING DEPARTMENT'S  
SECOND MOTION TO DISMISS AND GRANTING REFUNDS**

This appeal involves denied business privilege tax refunds requested by the above Taxpayer for 2010 through 2013. The Taxpayer appealed the denied refunds to the Tax Tribunal on March 31, 2015. The Department filed a motion to dismiss the appeal concerning the denied 2010, 2011, and 2012 refunds on April 8, 2015.<sup>1</sup>

The Department asserted in the motion that the Taxpayer had requested refunds on its original 2010, 2011, and 2012 business privilege tax returns, and that the refunds had been deemed denied six months after the returns had been filed. The Department contended that the Tribunal did not have jurisdiction to hear the Taxpayer's appeal because the Taxpayer had failed to appeal the deemed denied refunds within two years, as required by Code of Ala. 1975, §40-2A-7(c)(5)a.

The Tribunal denied the motion by Opinion and Preliminary Order dated June 17, 2015. The Order held that the Taxpayer's original 2010, 2011, and 2012 returns did not constitute refund petitions under Alabama law because the returns did not request refunds. The Tribunal further held that the Taxpayer had petitioned for refunds when it filed

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<sup>1</sup> The Department paid the Taxpayer a 2013 refund on April 17, 2015, plus interest of \$13,770.34. The Taxpayer claims that it is entitled to total interest of \$20,865.61 on the 2013 refund. The 2013 interest dispute is addressed below.

amended 2010, 2011, and 2012 returns, that the petitions were deemed denied six months after being filed, and that the Tribunal had jurisdiction to hear the Taxpayer's appeal because the Taxpayer had timely appealed to the Tribunal within the two year statute.

The Department filed a second motion to dismiss on July 13, 2015 concerning the 2010 and 2011 tax years. The Department claims in its second motion to dismiss that it issued Adjustment Notices to the Taxpayer on May 7, 2012 concerning the 2010 and 2011 tax years. According to the Department, those notices reduced the 2010 and 2011 refunds claimed on the Taxpayer's original 2010 and 2011 returns to \$25,463 and \$0, respectively. It argues that those Notices constituted refund denials, and that because the Taxpayer failed to appeal those denials within two years, or by May 7, 2014, the Tribunal does not have jurisdiction to hear the Taxpayer's appeal of the 2010 and 2011 refund denials.

Concerning the 2013 interest issue, the Taxpayer filed its 2013 business privilege tax return on September 15, 2013. On April 7, 2015, the Department refunded to the Taxpayer \$339,846 in 2013 tax that the Taxpayer had paid to the Department on March 13, 2013.<sup>2</sup> It also paid the Taxpayer \$13,770.34 in interest, computed from 90 days after the 2013 return was filed on September 15, 2013 until the refund was paid on April 7, 2015. The Taxpayer argues that it is entitled to statutory interest of \$20,865.61, computed from when the tax was paid on March 13, 2013 until the refund was issued on April 7, 2015.

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<sup>2</sup> Although the Taxpayer did not request a refund on its 2013 return of the amount overpaid in that year, the Department is authorized to issue a taxpayer an automatic refund if it "determines that a taxpayer is entitled to a refund, . . ." Code of Ala. 1975, §40-29-71.

The primary dispute between the parties is whether the Taxpayer's original 2010, 2011, and 2012 business privilege tax returns constituted petitions for refund under Alabama law. As discussed, the June 17, 2015 Opinion and Preliminary Order held that those original returns were not petitions for refunds under Alabama law. That Order further held that the Taxpayer's 2010, 2011, and 2012 amended returns constituted refund petitions that were deemed denied by operation of law on September 15, 2013, and that because the Taxpayer timely appealed to the Tribunal on March 20, 2015, within the two year statute, the Tribunal has jurisdiction to hear the Taxpayer's appeal. That holding is affirmed based on the reasoning set out in the June 17, 2015 Opinion and Preliminary Order, which is adopted and made a part of this Final Order.

The rationale in the Opinion and Preliminary Order is not changed by the fact that the Department issued Adjustment Notices to the Taxpayer concerning the 2010, 2011, and 2012 tax years.<sup>3</sup>

The workpapers attached to the 2010 Adjustment Notice indicate that the Taxpayer had claimed a refund of \$265,508 on its original 2010 return. As discussed in the June 17, 2015 Opinion and Preliminary Order at 12, that is not correct because the "[a]mount to be refunded," as shown on line 17 of the Taxpayer's original 2010 return, was \$0. Consequently, because the Taxpayer had not requested a refund on its original 2010 return, the Taxpayer had no reason to appeal from the later Adjustment Notice showing no refund due.

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<sup>3</sup> In its second motion to dismiss, the Department only mentions the Adjustment Notices issued by the Department on May 7, 2012 concerning the 2010 and 2011 tax years. The Department also issued an Adjustment Notice to the Taxpayer on August 29, 2014 concerning the 2012 tax year.

The Department's workpapers attached to the 2011 and 2012 Adjustment Notices both show that the "Amount to be Refunded," as claimed on the original returns for those years, was \$0. That is a clear acknowledgment by the Department that the Taxpayer did not claim refunds on its original 2011 and 2012 returns. And again, because the Taxpayer had not claimed refunds on its original 2011 and 2012 returns, as acknowledged by the Department's Adjustment Notices for those years, the Taxpayer had no reason to appeal from the later Adjustment Notices showing no refunds due.

Concerning the 2013 interest issue, the Department contends that the Tribunal cannot address the issue because the Taxpayer did not request interest when it filed its 2013 Alabama business privilege tax return. I disagree.

Code of Ala. 1975, §40-1-44(b)(1) requires that the Department shall pay interest on any overpayment from the date of overpayment – "interest shall be paid by the department on any refund of tax erroneously paid directly to the department. Interest shall be computed on any overpayment from the date of overpayment to the department, . . ."

The Legislature clearly intended by the above language that the Department is statutorily required to pay interest on any overpayment from the date of overpayment.<sup>4</sup> Consequently, a taxpayer is not required to affirmatively request interest, nor is the Departments' duty to pay interest pursuant to §40-1-44(b)(1) an issue that must be raised

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<sup>4</sup> Section 40-1-44(b)(1) contains exceptions from the general rule concerning income tax "paid over to the state pursuant to Article 2 of Chapter 18 of this title (income withholding) and estimated income tax paid pursuant to Section 40-18-83." Those exceptions require that the Department must pay interest beginning 90 days after the due date of the return. The above exceptions relate to income tax paid pursuant to Chapter 18 of Title 40, Code 1975, and thus do not apply in this case because this case involves the business privilege tax levied in Chapter 14A of Title 40, Code 1975.

by a taxpayer. Rather, use of the mandatory word “shall,” and not the permissive word “may,” mandates that the Department is statutorily required to pay interest on any overpayment from the date of overpayment.

The Department’s own business privilege tax return form, Form CPT, and its individual income tax return and amended return forms, Form 40 and Form 40X, respectively, also verify that a taxpayer that is due a refund is not required to request interest when claiming a refund. Those returns include a line on which a taxpayer can claim a refund, but none of the forms include a line on which the taxpayer can claim or request interest on the refund. If taxpayers were affirmatively required to claim interest when petitioning for a refund, then certainly the Department’s return forms on which the great majority of business privilege and income tax refunds are claimed would have a line for interest. The instructions concerning Form 40X also state that if a refund is due, “the Department will include the interest with your refund.” And as a practical matter, a taxpayer cannot know when claiming a refund on a business privilege or income tax return how much interest will be due because the taxpayer cannot know when the Department might issue the refund.

The Taxpayer petitioned for the refunds in issue based on the Alabama Court of Civil Appeals’ holding in *Alabama Dept. of Revenue v. American Equity Investment Life Insurance Company*, 169 So.3d 1069 (Ala. Civ. App. 2015). In the June 17, 2015 Opinion and Preliminary Order, the Tribunal directed the Department to state its position on the substantive issue in dispute. As discussed, the Department subsequently filed a second motion to dismiss on jurisdictional grounds on July 13, 2015, but did not address the above case or otherwise dispute that the Taxpayer had erroneously overpaid the tax in issue

based on the Court of Civil Appeals' holding in the case.

Because the Department issued the Taxpayer a full refund of the tax overpaid for the 2013 tax year, and given that the Department has never disputed the applicability of the above Court of Civil Appeals decision, the 2010, 2011, and 2012 refunds in issue are granted. The Department is directed to issue the Taxpayer refunds of 2010, 2011, and 2012 business privilege tax in the amounts of \$266,118, \$274,493, and \$326,808, respectively, plus statutory interest from the dates the amounts were overpaid to the Department, as mandated by §40-1-44(b)(1). The Department is also directed to pay the Taxpayer additional interest of \$7,095.27 concerning the 2013 refund. Judgment is entered accordingly.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2B-2(m).

Entered November 16, 2015.

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BILL THOMPSON  
Chief Tax Tribunal Judge

bt:dr

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