

ALABAMA TAX TRIBUNAL

ZANE A. & FALLON HANSEN, §
Taxpayers, § DOCKET NO. INC. 20-332-LP
v. §
STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

This appeal involves the Alabama Department of Revenue’s denial of a 2016 income tax refund. The Department of Revenue filed its Answer to the Taxpayers’ Notice of Appeal, and the Taxpayers were allowed 30 days to file a reply to the Answer. The Taxpayers did not respond.

The facts underlying the present appeal are as follows. On February 5, 2020, the Taxpayers filed their 2016 nonresident Alabama income tax return. The return claimed a refund of tax paid by estimated payment in 2016. The original due date of the 2016 return was April 15, 2017. Pursuant to § 40-2A-7(c)(2)a., Ala. Code 1975, the Taxpayers had two years from that date, or until April 15, 2019, to claim a refund.¹ They did not do so. Consequently, the refund was denied as untimely by the Department of Revenue. *See generally, State v. Pettaway*, 794 So. 2d 1153 (Ala. Civ. App. 2001) (recognizing that, under § 40-2A-7(c)(2)a., Ala. Code 1975, an income-tax refund is barred where the original income-tax return is filed more than two years after the original due date). The Taxpayers appealed.

On appeal, the Taxpayers concede that their 2016 return was untimely; however, they ask

¹Section 40-2A-7(c)(2)a., Ala. Code 1975, provides generally that a refund must be claimed within three years from the date the return was filed, or two years from payment of the tax, whichever is later. However, if no return was timely filed, as in this case, a taxpayer must claim a refund within two years from the date of payment of the tax. For purposes of the statute, tax paid through withholding or estimated payment is deemed paid on the original due date of the return.

that the doctrine of equitable tolling be applied in their case and that their refund be issued. The United States Supreme Court has previously determined that equitable tolling is inapplicable in cases involving time limitations for filing tax refund claims. *See generally, U.S. v. Brockchamp*, 519 U.S. 347, 117 S. Ct. 849, 136 L. Ed. 2d 818 (1997) (holding that Congress did not intend for equitable tolling to apply to time limitations for filing federal tax refund claims). Additionally, the Administrative Law Division of the Revenue Department, the predecessor to the Tax Tribunal, has previously held that the plain language of Alabama's statutes addressing when a taxpayer must petition for a refund, like § 40-2A-7(c)(2)a., Ala. Code 1975, must control and the doctrine of equitable tolling cannot apply. *See generally, DaimlerChrysler Corp. 1000 Chrysler Drive Auburn Hills, MI 48326-2766 v. State of Alabama*, Docket Corp. 04-0668 (Admin. Law Div. 8/13/2007).

Even if equitable tolling were available in this case, the Taxpayers would not be entitled to that remedy. Whether equitable tolling is applicable in a case generally involves a "fact-specific inquiry." *Weaver v. Firestone*, 155 So. 3d 952, 958 (Ala. 2013) (internal quotation marks and citations omitted). A party seeking equitable tolling must establish two elements: "'(1) that he has been pursuing his rights diligently, and (2) that some extraordinary circumstance stood in his way' as to the filing of his action." *Id.* at 957 (quoting *Pace v. DiGuglielmo*, 544 U.S. 408, 418, 125 S. Ct. 1807, 161 L.Ed.2d 669 (2005)). The "threshold necessary to trigger equitable tolling is very high." *Ex parte Ward*, 46 So. 3d 888, 897 (Ala. 2007) (internal quotation marks and citations omitted). The United States Supreme Court has previously recognized that simple negligence does not warrant the application of equitable tolling. *See generally, Holland v. Florida*, 130 S. Ct. 2549, 2564, 177 L. Ed. 2d 130 (2010) (noting that, in previous cases, the Supreme Court has recognized that "a garden variety claim of excusable neglect, such as a simple miscalculation that leads a lawyer to missing a filing deadline, does not warrant equitable tolling.") (internal quotation marks and citations omitted).

According to the Taxpayers, because their accounting firm failed to file their return within the requisite two-year period under § 40-2A-7(c)(2)a., Ala. Code 1975, the doctrine of equitable tolling should be applied in their case. Although I sympathize with the Taxpayers, as noted above, equitable tolling is not a remedy available in this case, and even if it were, simple negligence is not sufficient for such relief. Additionally, there is no other good faith or reasonable cause exception to the two-year statute-of-limitations period.

For the foregoing reasons, the Department of Revenue's decision to deny the Taxpayers' refund is affirmed. This Final Order may be appealed to circuit court within 30 days. *See* § 40-2B-9(m), Ala. Code 1975.

Entered June 18, 2020.

/s/ Leslie H. Pitman
LESLIE H. PITMAN
Associate Tax Tribunal Judge

lhp:cv

cc: Mark Hale, CPA
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