

**ALABAMA TAX TRIBUNAL**

AT&T SERVICES, INC.,

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Taxpayer,

§

DOCKET NO. S. 20-1085-LP

v.

§

STATE OF ALABAMA

DEPARTMENT OF REVENUE.

§

**OPINION & PRELIMINARY ORDER REGARDING  
REVENUE DEPARTMENT’S MOTION TO DISMISS UNTIMELY APPEAL**

This appeal involves partially denied refunds of State sales and use tax for January 1, 2014, through December 31, 2016. The Taxpayer submitted two separate refund petitions – one for the periods January 1, 2014, through December 31, 2014 (“Petition #1”), and another for the periods January 1, 2015, through December 31, 2016 (“Petition #2”). The Alabama Department of Revenue combined the two refund petitions (totaling \$952,188.27) and issued a Confidential Refund Report on January 21, 2020, in which the refunds were partially denied. The adjusted refund amount of \$256,201.21 was issued to the Taxpayer on February 25, 2020, along with a letter explaining the adjustments and notifying the Taxpayer that it “may request a formal hearing before the Alabama Tax Tribunal within two years from February 25, 2020.” The Taxpayer’s Notice of Appeal was postmarked on December 14, 2020, and received by the Tax Tribunal on December 17, 2020.

The Alabama Revenue Department filed an Answer and Motion to Dismiss Untimely Appeal. In its Answer, the Revenue Department stated that “[t]he Taxpayer’s two refund petitions were reviewed together by the Department.” However, the

Department asserted, through its Motion to Dismiss Untimely Appeal, that the Tax Tribunal lacks subject matter jurisdiction over Petition #1 because the Taxpayer did not file its Notice of Appeal, as to Petition #1, within the timeframe established by Ala. Code § 40-2A-7(c)(5)a. In its Answer, the Department stated that the Taxpayer's Notice of Appeal, as to Petition #2, would have also been untimely, but the Department was estopped from asserting that Petition #2 was untimely because the Taxpayer relied upon erroneous information from the Department (i.e., the notification that the Taxpayer "may request a formal hearing before the Alabama Tax Tribunal within two years from February 25, 2020") prior to the expiration of the appeal period. However, the Revenue Department argued that it is not estopped from asserting that Petition #1 was untimely because the erroneous information from the Department was given after expiration of the appeal period, as to Petition #1, and estoppel cannot revive an appeal period that has already expired.

The Revenue Department and the Taxpayer executed a series of "Agreement Extending Period of Limitation for Assessment or Refund" forms (Alabama Form BA: RS1). The first such agreement was executed on May 5, 2017, and the last agreement provided an extension date of June 30, 2020. The parties do not dispute the existence of these fully-executed agreements. However, there is dispute as to the purpose and effect of the agreement, which dispute is central to the jurisdictional issue raised by the Revenue Department.

A Preliminary Order, entered on December 27, 2021, directed the parties to submit any evidence that may clarify the purpose, operation, and effect of the

agreements, with respect to the filing of the refund petitions, the Department's review of and determination on the petitions, and the timeliness of the Taxpayer's Notice of Appeal. Each party submitted a timely response to the Preliminary Order and served same on the opposing party.

In its Response to Preliminary Order, the Taxpayer provided the following narrative of the initiation, seemingly by the Revenue Department, of the first agreement that was fully executed on May 5, 2017:

The refund petition was assigned to the Department's representative LaCynthia Holt. On April 17, 2017, Ms. Holt sent an email to the Taxpayer explaining that if the refund will take longer than six months to review; statute waivers would be required. Ms. Holt then attached a state executed form BA:RS1 extending the period to review until June 30, 2018 for AT&T Services. This form was then signed by the Taxpayer, Gary Johnson on May 5, 2017 and was sent back to Ms. Holt on May 18, 2017 keeping the period open for review.

All email correspondence that was sent by the state were encrypted and the Taxpayer could not retrieve them. Ms. Holt would have to provide those emails. Additionally, Ms. Holt requested a waiver for the AT&T procurement company that relates to AT&T Services which is AT&T Supply I ("Supply I").

A Second Preliminary Order, entered on April 19, 2022, directed the Revenue Department to provide to the Tax Tribunal all correspondence from the Department to the Taxpayer as it related to the refund petitions, including the transmission, execution, and receipt of all Agreement Extending Period of Limitation for Assessment or Refund forms.

The Revenue Department submitted its response to the Second Preliminary

Order. The Department's response included a 135-page attachment, which included documents related to the Department's review of the Taxpayer's refund petitions and communications between representatives of the Department and representatives of the Taxpayer.<sup>1</sup> In its response, the Department maintains its contention that "[t]he purposes of getting the [extension agreements] signed is to extend the statute of limitations for assessment and for filing additional refunds[,]” and that “nothing within [the] four corners [of the extension agreements] even insinuates an extension [of] the time that the taxpayer has to file an appeal with the Tribunal.”

As noted, the Department stated that it was estopped from asserting that Petition #2 was untimely because the Taxpayer relied upon erroneous information from the Department. Accordingly, this Order addresses the jurisdictional issue raised by the Revenue Department, as to Petition #1. There are two relevant statutory provisions, both of which operate to extend certain limitation periods upon agreement between the Revenue Department and a taxpayer. Those statutory provisions are as follows:

The department and the taxpayer may, prior to the expiration of the period for entering a preliminary assessment or the filing of a petition for refund, agree in writing to extend the time provided for entering the assessment or filing the petition in this chapter. The tax may be assessed, or the petition for refund may be filed, at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the

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<sup>1</sup>The communications from the Revenue Department's examiner are relate to the refund petitions filed on behalf of the Taxpayer and separate refund petitions filed on behalf of a related taxpayer, which are the subject of a separate appeal before the Tax Tribunal (*Bellsouth Telecommunications, LLC*, Docket No. S. 20-1086-LP).

period previously agreed upon.

Ala. Code § 40-2A-7(b)(2)(i)

\* \* \*

The department shall either grant or deny a petition for refund within six months from the date the petition is filed, unless the period is extended by written agreement of the taxpayer and the department. The taxpayer shall be notified of the department's decision concerning the petition for refund by first class mail, or by either United States mail with delivery confirmation or by certified mail, return receipt requested, sent to the taxpayer's last known address. If the department fails to grant a refund within the time provided herein, the petition for refund shall be deemed to be denied.

Ala. Code § 40-2A-7(c)(3)

Additionally, Ala. Code § 40-2A-7(c)(5) provides, in pertinent part,

a. A taxpayer may appeal from the denial in whole or in part of a petition for refund by filing a notice of appeal with the Alabama Tax Tribunal within two years from the date the petition is denied, and the appeal, if timely filed, shall proceed as hereinafter provided for appeals to the Alabama Tax Tribunal.

...

c. If an appeal is not filed with the Alabama Tax Tribunal or the circuit court within two years of the date the petition is denied, then the appeal shall be dismissed for lack of jurisdiction.

In accordance with Ala. Code § 40-2A-7(c)(3), a refund petition is deemed denied six months after it is submitted unless one of the following happens prior to the deemed denied date: (1) the Revenue Department grants the refund; (2) the Revenue Department denies the refund; or (3) the Revenue Department and the taxpayer agree

in writing to extend the six-month period. In accordance with Ala. Code § 40-2A-7(c)(5), a taxpayer has two years from the date a refund petition is denied, or deemed denied, to appeal to the Alabama Tax Tribunal.

Here, the Taxpayer submitted Petition #1 to the Revenue Department on February 21, 2017. The Revenue Department neither granted nor denied the refund within the 6-month period. Thus, absent an agreement executed to extend the six-month period in which the Department was required to grant or deny the refund, it was deemed denied on August 21, 2017, and the Taxpayer was required to file its Notice of Appeal to the Tax Tribunal no later than August 21, 2019. As noted, the Taxpayer's Notice of Appeal was postmarked on December 14, 2020, and received by the Tax Tribunal on December 17, 2020.

The Taxpayer contends that the agreements it executed with the Revenue Department extended the period in which the Department was required to act on the refund petitions in accordance with Ala. Code § 40-2A-7(c)(3). As noted, the last agreement executed by the parties extended some limitation period to June 30, 2020. The Taxpayer thus contends that it had two years from when the refund was partially denied on January 21, 2020, or until January 21, 2022, to file its Notice of Appeal.

The Revenue Department contends, however, that the agreements were executed in accordance with Ala. Code § 40-2A-7(b)(2)i. and, as such, they extended the period in which the Taxpayer could submit a refund petition beyond the period set out in Ala. Code § 40-2A-7(c)(2)a. The Department thus contends that Petition #1 was deemed denied on August 21, 2017, and the Taxpayer had two years from that date, or until

August 21, 2019, to file its Notice of Appeal.

The relevant portion of the last agreement form executed by the parties states the following:

As provided in Code of Alabama 1975, the taxpayer and the Alabama Department of Revenue hereby consent and agree as follows:

The amount of State and Local Seller's Use tax(es)/penalty/interest due from, or refund due to, the taxpayer under the provisions of the Code of Alabama 1975, for the tax period(s) indicated, may be assessed or claimed at any time on or before:

June 30, 2020

...

The language of the agreement, which is the same as all other agreements executed by the parties except for the extension date, indicates that it extends the period of time for the Department to assess taxes, penalties, and interest, or for the Taxpayer to claim a refund of same. This is consistent with the language of Ala. Code § 40-2A-7(b)(2)i., and supportive of the Revenue Department's argument in its Motion to Dismiss. However, LaCynthia Holt, the Department's examiner assigned to the Taxpayer's refund petition, made several statements regarding the purpose and effect of the extension agreements. The excerpts below from emails sent from Ms. Holt to the Taxpayer's representatives are relevant to show that, in this case, the Revenue Department used the agreements to extend the period in which it was required to act on the refund petition pursuant to Ala. Code § 40-2A-7(c)(3).

The December 31, 2017 deadline for providing the invoices

and supporting documentation for the referenced refund petitions is approaching. What is the status? If the data is not provided before the deadline, the petitions will be denied.

(Revenue Department's Discovery Response – LaCynthia Holt, Page 0070)

\* \* \*

The agreements for the following companies will be expiring June 30, 2018...My review of the refund petitions will not be completed before the agreements expire; therefore, I have extended them to December 31, 2018.

(Revenue Department's Discovery Response – LaCynthia Holt, Page 0057)

\* \* \*

The six months deadline is August 20, 2018. If the agreements are not received on or before August 20, 2018, the refunds will be denied.

(Revenue Department's Discovery Response – LaCynthia Holt, Page 0042)

\* \* \*

Please note the law regarding refund extensions below:

Code of Alabama 1975, as amended, Title 40-2A-7(c)(3) – Procedure governing petitions for refund

**(3) DEPARTMENT REQUIRED TO GRANT OR DENY REFUNDS; TIME LIMITATIONS.** The department shall either grant or deny a petition for refund within six months from the date the petition is filed, unless the period is extended by written agreement of the taxpayer and the department. If the department fails to grant a refund within the time provided herein, the petition for refund shall be deemed denied.



(Revenue Department's Discovery Response – LaCynthia Holt, Page 0065)

\* \* \*

The agreements will be expiring on December 31, 2019. The agreements need to be extended to complete the refund verification process and submit the paperwork to the Department for processing. I included the law regarding refund extensions in the email I sent to you through the data portal. If the agreements are not extended, the petitions will be deemed denied. It is the Department's policy that there be a minimum of 90 days remaining on the extension when the paperwork is submitted to the office for processing; therefore, the agreements will need to be extended through June 30, 2020 and the refunds will need to be submitted to the office for processing on or before March 31, 2020, allowing ample time for completion of all the refunds.

...

As stated before, the refunds will be denied if the agreements are not extended. The extension will need to meet the aforementioned deadlines.

Please have a discussion with your client immediately regarding this matter. I will prepare the new agreements and send them to you. The agreements must be signed on or before December 31, 2019.

(Revenue Department's Discovery Response – LaCynthia Holt, Page 0066)

\* \* \*

I just wanted to give you an update on the AT&T Services direct petition for refund and inquire about the status of the refunds of the other companies. I am still working on the spreadsheet, reviewing the documentation and use tax detail. As of today, I have about 40 documents remaining to review. What is the status of your review of the spreadsheets for AT&T Supply I, AT&T Southeast Supply and BST Purchasing & Leasing, as the January 31, 2020

deadline to provide additional comments and/or documentation is approaching?

(Revenue Department's Discovery Response – LaCynthia Holt, Page 0118)

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... I have completed my final review of the comments and documentation for AT&T Services, Inc. I will be sending the spreadsheet to you via the data portal. ... I am also preparing the work papers and documentation to submit the approved refund to the office for further processing.

(Revenue Department's Discovery Response – LaCynthia Holt, Page 0120)

These communications show that the Department's examiner: (1) was aware of the six-month limitations period prescribed by Ala. Code § 40-2A-7(c)(3); (2) proposed that the parties execute the Department's extension agreement form as an alternative to the running of the six-month period (i.e., an alternative to having the petition deemed denied); and (3) on multiple occasions, used the impending expiration of an extension agreement and, in turn, the potential denial of the refund, as the primary reason for the parties to execute a subsequent agreement.

The Revenue Department, in its response to the Second Preliminary Order, states that, despite the Taxpayer's refund petition being deemed denied, the extension agreements were necessary for the Department to continue reviewing "the petition for a possible automatic refund under Ala. Code § 40-27-71, as to the periods still within the statute of limitations for audit." However, as evidenced by the communications quoted above, the Department's examiner was actively reviewing and processing the

Taxpayer's refund petitions, and the agreements were used to extend the period in which the Department was required to act pursuant to Ala. Code § 40-2A-7(c)(3).

The Supreme Court of Alabama has held “that the State may be estopped from asserting that a taxpayer failed to timely appeal ‘where the untimeliness of the filing of their appeal was caused by misinformation furnished by the State’s officer and relied upon by the petitioners to their detriment.’” *Magee v. Home Depot U.S.A., Inc.*, 95 So. 3d 781, 788 (Ala. Civ. App. 2012) (quoting *Home Depot U.S.A, Inc. v. State of Alabama*, Docket No. S. 06-1079 (ALD 5/2/2007), quoting *Ex parte Four Seasons, Ltd.*, 450 So. 2d 110, 112 (Ala. 1984)). In applying this rationale, the Court has established that “if a governmental employee acting in his or her official capacity gives an individual or an entity erroneous information that is relied on in good faith by the individual or entity, and which directly results in the individual or entity failing to timely appeal, the government is estopped from asserting the statute of limitations as a defense.” *Id.* at 788-789.

In *Home Depot*, the Revenue Department, after the taxpayer's refund petition was deemed denied, “actively communicated” with the taxpayer concerning its refund claim and sent the taxpayer a refund denial letter notifying it of the date (i.e., two years from the date of the denial letter) in which the refund denial could be timely appealed. *See id.* at 789. The Alabama Court of Civil Appeals affirmed the Administrative Law Division's finding that such communication was not required and, absent such communication by the department, “the burden would have been on [Home Depot] to determine how long it had to appeal, i.e., two years from when the petition

was deemed denied.” *Id.* at 789-790. Additionally, “[f]or estoppel to apply, the advice or information must seem reasonable on its face, and the taxpayer must rely on the advice or information in good faith.” *Id.* at 790.

Here, the Revenue Department began active communications with the Taxpayer within the first six months of the Taxpayer’s filing Petition #1, and those communications continued until the time that the petition was partially denied by letter from the Department. In those communications, the Department’s examiner presented the extension agreements as an alternative to the Department’s completion of its work within 6 months, and to having the refund petition deemed denied. The examiner also quoted Ala. Code § 40-2A-7-(c)(3) in the context of the agreements being needed to “complete the refund verification process.” Additionally, one week before the Department notified the Taxpayer that the refund was partially denied, the examiner stated that she was “preparing the work papers and documentation to submit the approved refund to the office for further processing.”

The communications from the examiner reasonably indicate that she saw the agreements as a means of extending the 6-month period in which the Department had to act on the Taxpayer’s refund petition, or its otherwise being deemed denied. The Taxpayer relied on the erroneous information in good faith, as evidenced by its execution of subsequent agreements and production of documents within the deadlines established by the examiner. Thus, applying the *Ex parte Four Seasons* rationale articulated in *Home Depot*, the Department is estopped from asserting the statute of limitations as a defense.

The last agreement executed by the parties extended the time in which the Revenue Department was required to grant or deny the Taxpayer's refund to June 30, 2020. The Department partially denied the refund on January 21, 2020, and the Taxpayer had two years from that date, or until January 21, 2022, to file its Notice of Appeal. The Taxpayer's Notice of Appeal was received by the Tax Tribunal on December 17, 2020, thus timely filed. The Revenue Department's Motion to Dismiss Untimely Appeal, as to Petition #1, is denied and the appeal of said petition will proceed.

The Revenue Department is directed to submit an Answer as to Taxpayer's Petition #1 to the Tax Tribunal no later than July 28, 2022. The Taxpayer will be given an opportunity to reply to the Department's Answer.

Entered June 28, 2022.

/s/ Leslie H. Pitman

LESLIE H. PITMAN

Associate Judge

Alabama Tax Tribunal

lhp:ja

cc: Rick Blattner  
David E. Avery III, Esq.