

SELMA UNIVERSITY
1501 LAPSLEY STREET
SELMA, AL 35701-5232,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. W. 07-801

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER

The Revenue Department assessed Selma University (“Taxpayer”) for withholding tax for the quarters ending December 1996 and March 1997. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on March 27, 2008. Collins Pettaway represented the Taxpayer. Assistant Counsel Mark Griffin represented the Department.

The Taxpayer failed to pay its reported Alabama withholding tax liabilities for the quarters ending December 1996 and March 1997. It subsequently filed a Chapter 11 bankruptcy petition in May 1997. The Department filed a claim in the bankruptcy proceeding for delinquent withholding tax and interest of \$66,266.22. The Bankruptcy Court approved a payment plan by which the Taxpayer’s liabilities, including the Department’s withholding claim, would be paid in installments.

The Department received \$50,400 through 2002 pursuant to the Taxpayer’s payment plan. The Bankruptcy Court issued a Chapter 11 Plan Completion Order on October 8, 2003. Unfortunately, the Taxpayer still owed \$15,866.22 on the Department’s claim at that time.

The Department entered the final assessment in issue on August 15, 2007 for the remaining amount due, plus penalties and interest. The Taxpayer timely appealed. It paid

the outstanding claim amount of \$15,705.70 on January 31, 2008. It argues, however, that the penalties and the interest that has accrued on the claim since 1997 should be waived or abated.

The Department concedes that it could have assessed the Taxpayer after the Bankruptcy Court issued the Plan Completion Order on October 8, 2003. It consequently submitted the matter to the Taxpayer Advocate, who agreed to abate the interest that accrued from October 8, 2003 until the final assessment was entered on August 15, 2007.

As indicated, the Taxpayer argues that the penalties in issue should be waived for cause. It also contends that the issue of whether any additional interest is due is within the jurisdiction of the Bankruptcy Court, not the Administrative Law Division. Those issues need not be decided, however, because the final assessment was not timely entered within the statute of limitations for assessing tax at Code of Ala. 1975, §40-2A-7(b)(2).

Section 40-2A-7(b)(2) provides generally that the Department must enter a preliminary assessment for any tax due within three years from the due date of the return or three years from when the return was actually filed, whichever is later. The withholding returns for the quarters in issue in this case were due on January 31, 1997, concerning the last quarter of 1996, and April 30, 1997, concerning the first quarter of 1997. The Department had three years from those dates to assess the Taxpayer for the reported tax due.

The statute of limitations was stayed, however, when the Taxpayer filed for Chapter 11 bankruptcy in May 1997. See, §40-2A-7(b)(2)h.1. The stay remained in effect while the Taxpayer was in bankruptcy, and for 30 days thereafter. See again, §40-2A-7(b)(2)h.1. The Taxpayer was no longer in bankruptcy after the Bankruptcy Court issued the Plan

Completion Order on October 8, 2003. Consequently, the three year statute of limitations began running anew 30 days from that date, or on November 8, 2003.

The Department did not enter a preliminary assessment against the Taxpayer in this case. Rather, it directly entered a final assessment on August 15, 2007 for the admitted amount due, as authorized by Code of Ala. 1975, §40-2A-7(b)(1)b. The issue is whether the final assessment was timely entered.

This case is unusual because the statute of limitations at §40-2A-7(b)(2) only specifies the time within which the Department must enter a preliminary assessment for any additional amount due. If a preliminary assessment is timely entered, there is no specific time period within which the Department is required to thereafter enter a final assessment, if at all. The Department is generally required to enter a preliminary assessment for any amount due before entering a final assessment. If, however, an amount reported on a taxpayer's return is undisputed, §40-2A-7(b)(1)b. specifies that "the department may immediately enter a final assessment for the (undisputed) amount" due. The issue in this case is whether the Department is required to directly enter a final assessment pursuant to §40-2A-7(b)(1)b. concerning an admitted liability within any limitations period. In my opinion, it is.

The stated intent of the provision is to allow the Department to "immediately" enter a final assessment. That is, the Department may directly enter a final assessment for an admitted liability without first entering a preliminary assessment. The provision was not intended, and should not be construed, as giving the Department authority to enter a final assessment concerning an agreed or admitted liability at any time. Rather, reading §§40-2A-7(b)(1)b. and 40-2A-7(b)(2) together, the Department is required to immediately, i.e.,

directly, enter a final assessment on an admitted liability within the general statute of limitations for entering preliminary assessments; that is, three years from the due date of the return or three years from when the return was actually filed, whichever is later. The Department failed to timely enter the final assessment in this case within that time frame.

The penalties and interest included in the final assessment are voided.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered April 3, 2008.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Mark Griffin, Esq.
Alvin A. Cleveland, Sr.
Collins Pettaway, Jr., Esq.
Neal Hearn