

JIM BOOTHE CONTRACTING
& SUPPLY CO., INC.
26201 CAPITAL DRIVE
DAPHNE, AL 36526,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 08-922

**ORDER DENYING TAXPAYER'S
MOTION IN LIMINE**

The Taxpayer has moved for the Administrative Law Division to prohibit the Department from presenting certain evidence and denying certain facts relating to Department Reg. 810-6-3-69.02(1)(i) through (iii). The motion is denied.

I agree that to date the Department has only cited the Taxpayer's failure to comply with subparagraph (iv) of Reg. 810-6-3-69.02(1) as grounds for assessing the Taxpayer.¹ The Department has not asserted or cited the Taxpayer's failure to comply with subparagraph (i) through (iii) of the above regulation. But the Department is not barred from raising those provisions as an issue, and importantly, the Administrative Law Division is not barred from reviewing and addressing those provisions in determining the Taxpayer's correct liability, if any.

The Administrative Law Division has historically addressed all issues relevant to a taxpayer's liability for the period under appeal, regardless of whether a particular issue was previously raised or addressed by either party before the matter was appealed to the Division. Doing so complied with the Legislature's intent that the Taxpayers' Bill of Rights

¹ The Department has cited other reasons for assessing the Taxpayer not related to Reg. 810-6-3-69.02.

and Uniform Revenue Procedures Act (“URPA”), Code of Ala. 1975, §40-2A-2(1)a., “shall be liberally construed to allow substantial justice.” Determining a taxpayer’s correct liability after reviewing all facts and issues is clearly arriving at a just result. It also satisfies Code of Ala. 1975, §40-2A-9(a), which specifies that cases before the Administrative Law Division should be decided “to provide for the fair, efficient, and *complete* resolution of all matters in dispute.” (emphasis added)

In *Rheem Manufacturing Co. v. Alabama, Dept. of Revenue*, 2009 WL 497953 (ACA 2009), the Court held that in appeals involving denied refunds, the Administrative Law Division only has jurisdiction to decide an issue that was raised by the taxpayer in its petition for refund. The *Rheem* rationale does not apply, however, to appeals before the Administrative Law Division involving final assessments.

Concerning refunds, taxpayers are required by Code of Ala. 1975, §40-2A-3(14) to affirmatively state on the refund petition the reason or reasons why a refund is due, i.e., they must identify the issue or issues that are the basis for the refund.² The same is not true concerning final assessments because the Department may enter a final assessment without any prior or required input from the taxpayer. That is, a taxpayer is not required to raise an issue before the entry of a final assessment. Consequently, the taxpayer is not prohibited from raising any relevant issue on appeal, and the Administrative Law Division

² One of the many practical problems raised by the *Rheem* decision is that most refund petitions filed with the Department are income tax returns that claim a refund of tax overpaid by withholding or estimate payments. There are no specific “issues” raised on those returns, and thus it is unclear what issues the Administrative Law Division can address if the refund is denied and the taxpayer appeals, especially if the refund is deemed denied by operation of law without an affirmative denial by the Department. For other problems raised by the *Rheem* decision, see *HealthSouth Corporation v. State of Alabama*, BIT. 08-1021 (Admin. Law. Div. 7/16/2009), page 8, n. 3.

also is not barred from addressing all issues relevant to the taxpayer's correct liability for the period in issue. And conversely, the Department also is not barred or prohibited from raising any issue on appeal that has a bearing on the taxpayer's correct liability.

The above finding is reinforced by Code of Ala. 1975, §40-2A-7(b)(5)d.1, which provides that concerning appeals involving final assessments, the Administrative Law Division shall increase or decrease the final assessment to reflect the correct tax due. It could be argued that the above provision is limited by the *Rheem* decision, and that the Division can only consider issues previously raised by the taxpayer or the Department before the appeal in determining the correct tax due.

A better view, however, is that the Legislature intended the Division to review all facts and issues relevant to a taxpayer's liability, and thereafter determine the correct tax due. That interpretation clearly complies with the Legislature's stated intent that URPA shall be construed "to allow substantial justice." Section 40-2A-2(1)a. As discussed, arriving at a taxpayer's correct liability based on all relevant facts and deciding all relevant issues clearly satisfies that equitable mandate.

The December 22, 2009 hearing will be conducted as scheduled.

Entered December 10, 2009.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

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Mike Emfinger