METROCK STEEL & WIRE CO., INC. P.O. BOX 757 CARTHAGE, MO 64836-0757,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
Taxpayer,	§	DOCKET NO. BIT. 09-179
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER

The Revenue Department denied a 2001 business income tax refund requested by Metrock Steel & Wire Company, Inc. ("Taxpayer"). The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(c)(5)a. A hearing was conducted on June 11, 2009. The Taxpayer's representative filed a written response, and notified the Administrative Law Division that he would not attend the hearing. Assistant Counsel Mark Griffin represented the Department.

The issue in this case is whether the Taxpayer timely petitioned for a refund within the one year statute of limitations specified in the IRS audit adjustment refund provision at Code of Ala. 1975, §40-2A-7(b)(2)g.2. That statute requires that "a petition for refund of the overpayment (due to IRS audit changes) may be filed within the later of one year after the federal changes become final, or within the time (otherwise) allowed for the filing of a petition for refund. . . ." This case turns on when the federal audit changes in issue became "final."

The facts are undisputed.

The Taxpayer filed an amended Alabama return on September 13, 2007. The return requested a refund based on IRS audit changes made to the 2001 federal liability of the Taxpayer's consolidated group, Leggett & Platt, Inc., and various subsidiaries. The

Taxpayer also subsequently submitted federal Form 870, which is titled "Waiver of Restrictions on Assessment and Collection of Deficiency in Tax and Acceptance of Overassessment." The Form was received by the IRS on May 4, 2006, and was signed by a vice president of the Taxpayer's corporate group on that date. Above the signature block on the form is the phrase "Consent to Assessment and Collection."

The Department determined that the IRS audit changes had become final on the date the Form 870 was signed by the Taxpayer and received by the IRS, May 4, 2006. It consequently denied the refund claimed on the amended return because it had been filed on September 13, 2007, or more than one year after the federal audit changes became final on May 4, 2006.

Code of Ala. 1975, §40-2A-7(b)(2)g.3. provides that "the date that a federal change becomes final is the date on which the taxpayer and the Internal Revenue Service formally agree to the changes, or the date of any administrative or judicial order, judgment, or decree from which no further appeal was or may be taken." The Taxpayer's federal audit changes were not appealed. Consequently, the case turns on when the Taxpayer and the IRS formally agreed to the audit changes.

The Taxpayer argues that the Form 870 signed by the Taxpayer's representative on May 4, 2006 did not constitute a formal agreement to the audit results by both the Taxpayer and the IRS. Rather, the Taxpayer contends that the IRS did not agree to the audit changes until October 23, 2006, when it issued Letter 987 to the Taxpayer indicating that "[w]e made no changes to the original report." The Taxpayer's well-written response reads as follows:

As acknowledged by the ADOR, Taxpayer had one year after Taxpayer's federal changes became final to file a petition for refund of Alabama income tax. However, the ADOR is incorrect in its determination that "the Taxpayer's 2001 federal income tax changes became final on May 4, 2006, the date that Leggett & Platt's officer signed the 2001 Form 870..." As provided in Ala. Code, Sec. 10-2A-7(b)(2)g.3, "the date that a federal change becomes final is the date on which the taxpayer and the Internal Revenue Service formally agree to the changes..." (underline added). Form 870 does not constitute a formal agreement to the changes by the IRS.

At best, presentation of a Form 870 by the IRS to a taxpayer is the equivalent of presenting an "invitation to offer" under contract law, and the taxpayer's delivery of a signed Form 870 to the IRS constitutes nothing more than an offer (Internal Revenue Manual (IRM) Section 4.10.8.9.7(2)). No 'agreement', actual or implied, exists until the IRS formally accepts the taxpayer's offer. The IRS formal (final) acceptance was communicated to Taxpayer on Letter 987.

For its own internal tracking purposes, the IRS generally refers to cases as either "agreed" or "unagreed" based on whether the taxpayer involved intends to consent to adjustments proposed by an IRS examining agent (IRM Section 4.10-8.4(1)). However, there are other internal designations used by the IRS, including "partially agreed, "excepted agreed" and others as defined in IRM Section 4.75.15.2. This IRS case designation system facilitates the case flow within the IRS tax assessment process, and the initial designation is made by an examining agent before the audit report has been submitted to the case manager for review. Designation of a case as "agreed" by an IRS auditor does not mean that the IRS has finalized the audit and closed the case, or even that the case manager agrees with the examining agent's proposed adjustments.

Taxpayer's examination required an "excepted agreed case" report because it was a Joint Committee Case (IRM Section 4.10.8.4.1(7)). Please refer to IRM Section 4.36.1.1 for the role of Joint Committee on Taxation, and IRC sec. 6405, which defines $2 million as the jurisdictional amount for Joint Committee review. Taxpayer's net 2000-2001 refund as indicated on the Form 870 was in excess of the $2 million jurisdictional amount. This means that Taxpayer's case not only required further IRS approvals (including Joint Committee Specialist review (IRM Section 4.36.1.2(4)), it also required Joint Committee review before it could be considered 'final' and closed (IRC sec. 6405(a)).

Form 870 is used to document a taxpayer's willingness to consent to an IRS examining agent's proposed adjustments, and as a claim for refund (IRM Section 4.10.8.9.7). It stops the running of interest on the final assessment (IRM Section 4.10.8.4.2(1)). It does not preclude further adjustments by the IRS Commissioner (IRM Sections 4.10.84(3); 4.36.1.2(5)). Thus, the

adjustments proposed by an examining agent are still subject to further IRS review and other conditions that preclude the adjustments, or the federal audit, from being considered "final."

Indeed, the Form 870 does not bind the IRS to any formal agreement as to the stated increases and decreases in tax. To the contrary, Form 870 doesn't even provide a place for the IRS representative's signature.

The ADOR states that the Form 870 was "accepted" by the IRS on May 4, 2006, the date listed in the upper right corner of the form. However, the ADOR's assertion is contradicted by the Form 870 itself, which clearly states that date is nothing more than the date "received" by the IRS. The ADOR's characterization of the date as some type of "acceptance" by the IRS is at best misleading.

The ADOR also incorrectly states that the Taxpayer claimed in its appeal that the Letter 987 was a "closing agreement." Taxpayer made no such assertion, and in fact has never entered into a closing agreement with the IRS with regard to 2001. The ADOR then makes the unsubstantiated declaration that Form 870 is a "closing agreement" form "prescribed by the IRS." However, Form 870 is in fact not a form prescribed by the IRS as a closing agreement. As provided on the IRS website, Closing Agreements are generally Form 866, *Agreement As to Final Determination of Tax Liability* or Form 906, *Closing Agreement on Final Determination Covering Specific Matters.* Both of these documents require the signature of both a taxpayer and the Commissioner of Internal Revenue or appropriate counsel. Finally, in Joint Committee cases, the IRS will not enter into a closing agreement with a taxpayer until after it has been reviewed by the JCT (IRM Section 4.36.3.6.2(1)). The fact that the IRS has prescribed forms for entering into a closing agreement with a taxpayer, that such prescribed forms require the signature of both the taxpayer and the IRS, that Form 870 is NOT one of those prescribed forms, and that the IRS will NOT enter into a closing agreement until after JCT review, are ail further evidence that the Form 870 is NOT when Taxpayer's federal audit became final.

The ADOR acknowledges that there must be some formal agreement between the parties to constitute the point in time whereby the "federal changes become final." The "point in time" that the "federal changes become final" is when the IRS issues the Letter 987 (IRM Section 4.10.8.3.7). The IRS Letter 987 is issued after the IRS has reviewed the examining agent's reports and supporting audit workpapers, etc., and (in the case at hand), after Joint Committee on Taxation review.

The Taxpayer has enclosed IRM Section 4.10.8.3.7 from the Internal Revenue Manual that explains Letter 987. Section (1) tells examining agents that they

> should "inform taxpayers that the agreed case is subject to review and once it is accepted, they will receive a Letter 987, Notification Letter - Agreed Income Tax Change Cases, stating the case is closed." As previously indicated in the appeal, the IRS can either 1) accept the original report with no changes or 2) make changes to the report and enclose a corrected examination report. If the deficiencies or over-assessments noted on Form 870 were "final," the IRS would not need Letter 987, nor would the IRS instruct examining agents to tell taxpayers the case was still subject to review, nor would the change report still require IRS acceptance.
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> Further, it would be bad policy for the ADOR to consider the federal income tax changes as becoming final by the signing of a Form 870. This type of policy could lead to significant additional burden, confusion, and complexities on the Taxpayer and the ADOR to process multiple amended filings by the Taxpayer as subsequent federal changes were made before an IRS audit in fact became "final."
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> Taxpayer had one year from the date of Letter 987 (October 23, 2006), that being October 23, 2007, to file a petition for refund of its 2001 Alabama tax. Taxpayer filed its petition timely on September 13, 2007 and therefore the refund was incorrectly denied. We request that our refund claim be approved and paid with all applicable statutory interest and costs.

I have reviewed the Internal Revenue Manual sections cited and submitted by the Taxpayer, and I cannot disagree with the Taxpayer's conclusions. The Form 870 was not an agreement by the IRS because the audit changes were further reviewed by the IRS, and thus may have been changed by the IRS. Not until the IRS issued Letter 987 on October 23, 2006 stating that no changes were made to the audit did the IRS finally agree to the audit results.

Because the Taxpayer filed its 2001 amended return and petitioned for a refund within one year from when the federal audit results became final, i.e., were agreed to, the petition was timely filed within the special one year statute at §40-2A-7(b)(2)g.2. The refund is thus due to be granted. Judgment is entered accordingly.

If the Department disagrees with the above analysis, it may apply for a rehearing

within 15 days and explain why. Otherwise, this Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered June 22, 2009.

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BILL THOMPSON
Chief Administrative Law Judge

bt:dr
cc: Mark Griffin, Esq.
Brian K. Davison
Melody Moncrief