

RADIANCE TECHNOLOGIES, INC §
350 WYNN DRIVE NW §
HUNTSVILLE AL 35805-1961, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer, §

DOCKET NO. BIT. 13-528

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed Radiance Technologies, Inc. (“Taxpayer”) for 2011 business income tax. 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 January 15, 2014. CPA Michael Woeber represented the Taxpayer. Assistant Counsel David Avery represented the Department.

The Taxpayer is located in Huntsville, Alabama. Like most corporations doing business in Alabama, the Taxpayer is required to prepay its annual Alabama corporate income tax liability by making quarterly estimated payments during the year.

Corporations are generally required to pay 25 percent of their required annual payment on a quarterly return. A corporation may, however, elect to compute the quarterly amount due using an annualized income installment method.¹ If that alternative method of

¹ Code of Ala. 1975, §40-18-80.1 specifies that corporations shall pay estimated income tax in accordance with 26 U.S.C. §6655. That statute generally requires corporations to file quarterly returns and pay 25 percent of the annual amount due. A corporation may, however, elect to utilize and pay based on an annualized income method, see 26 U.S.C. §6655(e). The election to use the alternative annualized income method is not mentioned in §40-18-80.1, or in the related Alabama regulations, Regs. 810-3-82-.02 and 810-3-83-.02.

computing the quarterly tax is used, the corporation must after the fact elect to do so by attaching Alabama form 2220-AL to its annual return.

The Taxpayer used the alternative annualized income method in computing its quarterly estimated payments in 2006. It failed, however, to include form 2220-AL with its annual 2006 Alabama return. The Department notified the Taxpayer that it had failed to submit the form with the return, but that the penalty for failing to do so was being waived.

The Taxpayer also used the alternative method in 2007, but again failed to submit form 2220-AL. The Department billed the Taxpayer for the penalty for failing to do so, which the Taxpayer apparently paid.

The Taxpayer again failed to submit the form 2220-AL with their 2008 and 2009 returns. The Department notified the Taxpayer on both occasions that the form was required, and again waived the penalty in both years.

When the Taxpayer again failed to submit the form 2220-AL with its 2010 Alabama return, the Department initially assessed it for the penalty for failing to do so. The Taxpayer's tax preparers, a local Huntsville CPA firm, appealed to a supervisor in the Department's corporate tax section. The supervisor agreed to waive the penalty once again, with the stipulation that if the Taxpayer failed to submit the form 2220-AL in the future, the penalty would not be waived.

The Taxpayer timely filed its quarterly estimated tax returns in 2011 and paid the tax due. In preparing the Taxpayer's 2011 Alabama annual return, the Taxpayer's CPAs double checked to ensure that they had indicated on the return that form 2220-AL was to be electronically remitted to the Department with the return. The preparers submitted the

return to the Taxpayer for approval, the Taxpayer signed the electronic filing authorization form, and the preparers then electronically submitted the return to an authorized third party vendor, Wolters Klower, the parent of CCH, for subsequent filing with the Department.

When the Department electronically received the 2011 return, form 2220-AL was not included. The Department consequently entered the final assessment in issue, which includes a late payment penalty of \$163.54, and a late payment estimate penalty of \$6,944.20.

The Taxpayer's tax preparers represented the Taxpayer at the January 15 hearing. They explained that after receiving the 2011 final assessment, they contacted CCH and inquired about why the form 2220-AL had not been electronically submitted with the Taxpayer's 2011 return. CCH explained that if there is no penalty due, then form 2220-AL is not required to be filed with the return. The Taxpayer's appeal letter reads in part:

Four estimated tax payments were made in a timely manner for tax year 2011. The April 2011 payment was due on the 18th because of Emancipation Day, a Federal holiday. The following payments were made by the dates below:

4/18/11 - \$52,000
6/15/11 - \$50,000
9/15/11 - \$87,000
12/15/11 - \$48,000

Radiance Technologies, Inc. is a large taxpayer. We prepared Form 2220AL with the 2011 Alabama corporate tax return. This form shows that they were in an overpayment position for all four quarters. A copy of the 2011 Form 2220AL is enclosed. It came to our attention from the tax notice dated December 17, 2012 that Form AL 2220 did not transmit to the Alabama Department of Revenue along with the rest of the 2011 Alabama corporate return within the e-file transmission.

I contacted CCH support service to discuss the issue. A copy of my discussion with CCH support is enclosed. CCH states that there were no

business rules that required the transmission of Form 2220AL when no penalty is due on Form 2220AL. We at Beason & Nalley, Inc. knew otherwise and prepared Form 2220AL. Even though we prepared the 2011 Form 2220AL with the tax return software, it was not included in the e-file transmission due to the CCH programming error. The 2011 Form 2220AL printed within our accountant's and client's copy of the return. This led us to believe that the form was included in the e-file transmission at the time of filing the tax return.

CCH has stated that they have fixed this issue and that the Alabama Form 2220AL will transmit when we e-file the 2012 Alabama corporate return.

The Taxpayer's tax preparers explained at the January 15 hearing that the problem recurred in the years before 2010 because the Taxpayer had failed to tell them about the previous notices sent by the Department. The preparers apparently first learned about the problem when they contacted the Department concerning the 2010 penalty.

The Taxpayer's preparers made every effort to ensure that the form 2220-AL was to be submitted with the Taxpayer's 2011 return. Unfortunately, through a CCH software error, the form 2220-AL was not subsequently transmitted to the Department with the return. The issue is whether the Taxpayer should be penalized because the software used by the third party vendor that electronically remitted the return to the Department erroneously did not also remit the form 2220-AL.²

The Taxpayer's tax preparers clearly made a good faith effort to ensure that the form 2220-AL would be electronically submitted with the Taxpayer's 2011 Alabama return.

² Apparently, under federal law form 2220, which is the equivalent to the Alabama form 2220-AL, is not required to be filed if there is no penalty due. But while Alabama's estimated tax statute generally adopts the federal provision at 26 U.S.C. §6655, Alabama requires that the form 2220-AL must be submitted in all cases. Why and under what authority the Department requires the filing of the form in all cases is not known.

The fact that the third party vendor authorized to remit the return failed to transmit the form 2220-AL due to a software glitch does not negate that good faith effort. Under the circumstances, the penalties are waived for reasonable cause.

I also note that the Department apparently also assessed the Taxpayer for the wrong penalties. The Taxpayer timely filed its 2011 quarterly returns and paid more than the tax due with each quarterly return. The Taxpayer's failure to submit the form 2220-AL with the annual 2011 return would thus warrant a failure to timely file penalty, not a failure to timely pay penalty, as assessed by the Department.

The Administrative Law Division has held that a technically erroneous assessment must be voided. In *Knight v. State of Alabama*, Docket Inc. 99-431 (Admin. Law. Div. 5/23/2000), the Division held that a final assessment entered for the wrong tax period must be voided. Likewise, in *Diversified Sales, Inc. v. State of Alabama*, Docket S. 02-458 (Admin. Law Div. 3/13/2003), an assessment of the wrong type of tax was voided in part.

The type of tax assessed by the Department is not a mere technicality. Rather, it is as substantively important as the tax period involved. Further, a Department regulation must be followed unless it is unreasonable or contrary to the statute to which it relates. *Adair v. Alabama Real Estate Comm'n*, 303 So.2d 119, 122 (Ala. Civ. App. 1974). The requirement that a final assessment must correctly identify the type of tax being assessed is not unreasonable. The requirement also is not contrary to any statute. "Men must turn square corners when they deal with the government; it is hard to see why the government should not be held to a like standard of rectangular rectitude when dealing with its citizens." *Title Ins. Co. of Minn. v. SBE*, 4 Ca. 4th 715, 732 (Calif. S. Ct. 1992). Consequently, the municipal sales tax final assessment in issue must be voided to the extent it consists of use tax on the materials used on the furnish and install contracts.

Diversified Sales at 4 – 5.

Likewise, the type of penalty assessed, like the type of tax assessed, is not a mere technicality. For that reason also, the failure to timely pay penalties should be deleted from the final assessment.

The final assessment, less the penalties, is affirmed. Judgment is entered against the Taxpayer for tax and interest of \$1,128.77. Additional interest is also due from the date the final assessment was entered, May 16, 2013.

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

Entered April 21, 2014.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: David E. Avery, III, Esq.
Matt Capone, CPA
Angela Cumbie