

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. MISC. 86-243

JOE C. MAXWELL
P. O. Box 6504
Dothan, AL 36302,

§

§

Taxpayer.

§

ORDER

This case involves two disputed petitions for refund of license tax filed by Joe C. Maxwell (Taxpayer) for the fiscal year 1983-1984. A hearing was conducted in the matter on July 2, 1987.

The Taxpayer was present and represented himself. The Revenue Department was represented by assistant counsel J. Wade Hope. Based on the evidence submitted in the case, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The Taxpayer operates two Laundromats which utilize coin-operated vending machines. On October 25, 1983, the Taxpayer purchased a fiscal year license (October 1, 1983 through March 31, 1984) for each of his operations, as required under Code of Ala. 1975, §40-12-176(p).

Thereafter, the Alabama Legislature amended §40-12-176(p) so as to exempt coin-operated or self-service laundries from the tax levied thereunder. The effective date of the amendment was November 28, 1983.

On July 28, 1986, the Taxpayer filed two petitions for refund

relating to the license tax that was paid on October 25, 1983. The Department denied said petitions by letter dated August 28, 1986 on the basis that the petitions had not been filed within two years of payment of the tax, as required by Code of Ala. 1975, §40-12-23(b).

The Taxpayer does not dispute that the refund petitions were filed more than two years after payment of the tax. Rather, the Taxpayer argues that the two-year statute of limitations should not apply because the Department failed to notify him of his right to a refund, and, in fact, informed him that a refund could not be issued pending the outcome of an on-going court action.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-12-23, provides that any application for refund of a license tax must be made within two years from the date of payment. The Taxpayer does not dispute that the petitions in question were filed more than two years after payment of the tax. Thus, without addressing the issue of whether the Laundromat exemption to §40-12-176(p), which became effective November 28, 1983, should be applied retroactively to the fiscal year in dispute, the refund petitions must be denied as being barred by the time limitation set out in §40-12-23.

The Department's failure to inform the Taxpayer of his right to a refund cannot excuse the Taxpayer's failure to request a refund within the statutory two-year period, especially in light of the Department's contention that no refund is due in the first

instance because the Laundromat exemption should not be applied retroactively. Further, even if a Department employee had advised the Taxpayer not to file a refund petition, reliance on such erroneous advice cannot estop the Department from taking whatever action is required by statute. State v. Maddox Tractor and Equipment Co., 69 So.2d 426.

The above considered, the refund petitions in issue were untimely filed and thus are due to be denied.

Entered this 6th day of July, 1987.

BILL THOMPSON
Chief Administrative Law Judge