

ALABAMA TAX TRIBUNAL

CLOVIS T. ZIRNSTEIN, §
§
Taxpayer, § DOCKET NO. INC. 22-864-LP
v. §
STATE OF ALABAMA §
DEPARTMENT OF REVENUE. §

OPINION AND PRELIMINARY ORDER

This appeal involves denied refunds of 2016, 2018, and 2019 income tax. A conference call was held on April 18, 2023. Billy Young represented the Revenue Department, and Pamela Blocton, the Revenue Department’s examiner, was present for the call. The Taxpayer was also present.

The Revenue Department stated that the Taxpayer filed his 2016 return (in which the Taxpayer requested a refund) late, that the return was audited and adjusted, and that a billing was issued to the Taxpayer. The parties agree that no final assessment was entered for 2016. The Revenue Department stated that the Taxpayer filed returns for 2018 and 2019, that those returns were accepted without being audited, and that the refund amounts requested were applied to the 2016 billing.

Section 40-2A-7(c)(4), Ala. Code 1975, provides, in pertinent part:

“If a petition is granted, or the department, the Alabama Tax Tribunal, or a court otherwise determines that a refund is due, the overpayment shall be refunded to the taxpayer by the state, county, municipality, or other entity to which the overpayment was distributed. If the department determines that a refund is due, the amount of

overpayment plus accrued interest may first be credited by the department against any outstanding final tax liabilities due and owing by the taxpayer to the department, and the balance of any overpayment shall, subject to the setoff provisions of Article 3 of Chapter 18, be refunded to the taxpayer.”

(emphasis added). “Outstanding final tax liability” is defined in Rule 810-14-1-.21 as:

“(a) a final assessment;

“(b) an admitted liability on a tax return filed by or on behalf of the taxpayer;

“(c) a liability to which the taxpayer has consented in writing to the amount due; or

“(d) a liability resulting from an attempted payment of taxes by a check that was not honored by the bank for any reason.”

Additionally, the Administrative Law Division has clarified that a refund may only be offset by an outstanding final tax liability. Decatur RSA LP and AT&T Mobility II LLC, S. 13-414, S. 13-415 (Admin. Law Div. 05/06/2015). Judge Thompson explained:

“When a taxpayer petitions for a refund of a particular type of tax and tax period, § 40-2A-13(c)(iii), when read in context, authorizes the Department to audit the taxpayer to determine the amount of refund due, if any, for the type of tax and specific tax period involved in the petition. As discussed below, the Department has in fact audited the Petitioners' records for the refund period in issue and has determined per the audit the total refund due the Petitioners and their customer class members. And having determined the total refund due, the Department is otherwise allowed by § 40-2A-7(c)(4) to offset the refund by any outstanding final tax liability (for any type tax and tax period) owed by a customer class member to the State. Section 40-2A-13(c)(iii) does not, however, give the Department carte blanche authority to hold the refund indefinitely while it conducts audits for any and all other tax types to which the customer class members may be subject. And even if § 40-2A-13(c)(iii) is construed as allowing the Department to offset the refund with another type tax owed by a class member, the provision must still be read in para materia with § 40-2A-7(c)(4), which, as

discussed, allows the Department to offset a refund only if the taxpayer owes an outstanding final tax liability.”

(emphasis in original).

The Revenue Department has informed the Tax Tribunal that it located no authority authorizing it to apply the Taxpayer’s refunds to the 2016 billing. Therefore, the Revenue Department is directed to reverse the action of applying the 2018 and 2019 refunds to the 2016 billing and to issue the Taxpayer’s refunds for 2018 and 2019.

The parties are directed to inform the Tax Tribunal by **June 15, 2023**, of the date the Taxpayer filed his 2016 individual income tax return, the date the Taxpayer requested a refund of 2016 individual income tax, and if and/or when the Taxpayer’s refund request was denied or deemed denied.

The Taxpayer has submitted documentation with respect to tax year 2016; that documentation is enclosed with the Revenue Department’s copy of this Order.

Entered May 17, 2023.

/s/ Leslie H. Pitman

LESLIE H. PITMAN

Associate Tax Tribunal Judge

lhp:ac

cc: Clovis G. Zirnstein
Warren W. Young, Esq. (w/enc)