

ALABAMA TAX TRIBUNAL

WAYNE L. & JOAN C. SOVOCOOL, §
Taxpayers, § DOCKET NO. INC. 24-0132-JP
v. §
STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

This appeal involves the denial of a request for a refund of income tax for 2021. The case came before the Tax Tribunal for trial, which was held via videoconference, on August 15, 2024. Both Taxpayers, Wayne and Joan Sovocool, appeared and testified. Andrew Gidiere represented the Alabama Department of Revenue. Clifford Jennings, a Revenue Department Tax Accountant, appeared and testified.

On May 26, 2023, the Alabama Legislature enacted 2023 Ala. Act 377 (“the Rebate Act”), which provided a one-time refundable tax credit (“rebate”) to qualified taxpayers. The Rebate Act allotted to “individual taxpayers” who filed an Alabama 2021 individual income tax return “on or before October 17, 2022,” a “one-time refundable income tax credit” of “\$150.00 for single, head of family, and married filing separately” taxpayers, and \$300.00 for “married filing jointly” taxpayers. This appeal stems from the Revenue Department’s denial of the rebate allotted by the Rebate Act concerning the Taxpayers.

On February 5, 2022, the Revenue Department issued an “SB86 Rebate Denial Appeal” letter, denying the Taxpayers’ claim to the \$300.00 rebate. The Revenue Department’s denial stated that the Taxpayers had not filed their Alabama 2021 tax return

until November 23, 2022, over a month after the October 17, 2022, deadline imposed by the Rebate Act. The Taxpayers then filed a Notice of Appeal of the denial with the Alabama Tax Tribunal on February 13, 2024.

At trial, the Taxpayers argued that they filed their Alabama 2021 tax return before the October 17, 2022, deadline imposed by the Rebate Act. The Taxpayers stated that they prepared both their Alabama and federal 2021 tax returns on March 17, 2022. The Taxpayers' Alabama 2021 return indicated that the Taxpayers had an outstanding liability of \$493.00 for that year. The Taxpayers then mailed the returns to the corresponding tax entities by depositing them in a U.S. Postal Service drop box on April 5, 2022, including with the Alabama return a check for the \$493.00 outstanding liability. The Taxpayers received their refund from their federal return in mid-May 2022. However, the Taxpayers never received any notification of the receipt of the Alabama return.

The Taxpayers called the Revenue Department on May 13, 2022, for an update on their Alabama 2021 return. The Taxpayers testified that they were informed at the time of this call that the Revenue Department's processing of 2021 returns was belated. The Taxpayers called again twice in June, receiving similar responses. On June 30, 2022, the \$493.00 check the Taxpayers sent to the Revenue Department for their 2021 tax liability posted to the Taxpayers' bank account. Having received no further updates after the check posted, the Taxpayers called the Revenue Department again in August to confirm their return had been received. The Taxpayers testified that they were informed the Revenue Department was still behind schedule, but that their return was "in the back." A subsequent call in September received a similar response. During another call on December 6, 2022, a

representative of the Revenue Department requested that the taxpayers provide another copy of their Alabama 2021 return. The Taxpayers then mailed the requested copy the same day they received the request—December 6, 2022.

Mr. Jennings, testifying for the Revenue Department, testified that the Revenue Department had no record of receipt of the Taxpayers' Alabama 2021 return before the October 17, 2022, deadline imposed by the Rebate Act. However, the Revenue Department's records regarding receipt of the return copy mailed in December indicated that, somehow, the return was filed before the Revenue Department received the copy the Taxpayers mailed on December 6, 2022. Specifically, the Revenue Department's records indicate that the return was *filed* on November 23, 2022, *postal stamped* on December 6, 2022, and *received by the Revenue Department* on December 8, 2022. Mr. Jennings explained that the Department will sometimes backdate the receipt of items they receive in December, but he could not provide a more revelatory explanation as to why such backdating occurred in this instance. Mr. Jennings confirmed the call logs and notes maintained by the Revenue Department reflecting the Taxpayers' calls regarding the status of their Alabama 2021 return. Mr. Jennings also confirmed that the Taxpayers had timely filed their returns for every other year on record and had no record of accrual of a late-payment penalty for any tax year. Finally, Mr. Jennings opined that it was a common practice for taxpayers to send the Revenue Department tax liability payments without also sending their return with the payment.

“Concerning [] refund petitions, the burden is on a taxpayer to prove that a refund is due.” *Game Day Tents, Inc.*, Docket No. S. 17-358-JP, (Ala. Tax Trib. April 12, 2023)

(quoting *The Package Store #1, Inc., and The Package Store #2, Inc. v. Ala. Dep't of Revenue*, Docket No. S. 87-183, (Admin. Law Div. Jan. 26, 1993)). Here, to qualify for the rebate allotted by the Rebate Act, a qualified Alabama taxpayer must establish that they filed their Alabama 2021 tax return prior to the October 17, 2022, deadline.

The Taxpayers have met this burden. The Taxpayers' testimony that they mailed their return and check in the same envelope to the Revenue Department on April 5, 2022, supports the Taxpayers' position. The June 30, 2022, posting of the check addressed to the Revenue Department for the Taxpayers' 2021 tax liability proves that the Taxpayers filed their 2021 Alabama income tax return timely because the Taxpayers testified that the check was mailed to the Revenue Department in the same envelope as their return.

The Revenue Department's records, in comparison, are unhelpful as they indicate the return was filed on November 23, 2022, yet also indicate the Revenue Department did not receive the return until December 8, 2022, which is when the Revenue Department requested another copy of the Taxpayers' return. The Revenue Department did not have record of a late-payment penalty or any other deficiency regarding the Taxpayers' 2021 return, or any of their returns for other years. The Taxpayers also provided with their Notice of Appeal a copy of their Alabama 2021 return that shows it was completed on March 17, and a copy of the check for their 2021 liability addressed to the Revenue Department that shows it posted on June 30, 2022, both of which align with the Taxpayers' testimony.

Further, the Taxpayers' testimony and the Revenue Department's records establish that the Taxpayers have a history of timely filing their returns and that, in at least this instance, they dutifully ensure their efforts to file their returns are adequate *and* successful.

The Taxpayers' testimony and the Revenue Department's records establish that the Taxpayers called the Revenue Department on an almost monthly basis beginning on May 13, 2022, to inquire into the status of their return. When the Taxpayers finally received a concrete answer on December 6, 2022, that the Revenue Department did not have their return, the Taxpayers mailed a new copy the same day. It must be noted that all of this occurred *before* the Taxpayers had any reason to believe that anything would come of filing their Alabama 2021 return besides the payment of their outstanding liability.¹

Therefore, the Taxpayers are due the \$300.00 rebate allotted by the Rebate Act, and the Revenue Department's denial of the Taxpayers' claim to the rebate is overturned. Judgment is entered accordingly. The Revenue Department is directed to issue a refund to the Taxpayers for the rebate in due course.

This Final Order may be appealed to circuit court within 30 days, pursuant to Ala. Code § 40-2B-2(m).

Entered August 30, 2024.

/s/ Jeff Patterson
JEFF PATTERSON
Chief Judge
Alabama Tax Tribunal

jp:thb

cc: Wayne L. & Joan C. Sovocool
Andrew P. Gidiere, Esq.

¹ The introduction to the legislature of the bill—then referred to as SB86—that would become 2023 Ala. Act 377 did not occur until March 21, 2023.