

ALABAMA TAX TRIBUNAL

JEFFERY & STACEY SWAIM,	§	
Taxpayers,	§	DOCKET NO. INC. 23-505-JP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

FINAL ORDER

This appeal involves the denial by the Alabama Department of Revenue of a request for a refund of 2020 income tax. The Revenue Department submitted a position statement concerning whether the Taxpayers' refund request was untimely, and the Taxpayers were allowed the opportunity to respond. However, the Taxpayers did not do so.

In their Notice of Appeal, the Taxpayers requested that the Tax Tribunal overturn the Revenue Department's denial of the Taxpayers' refund request. The Taxpayers stated that they initially submitted their return on time, but the return was not accepted due to a software issue. Once the Taxpayers were notified of the error, they resubmitted the return. In the Revenue Department's Answer, it stated that the Taxpayers' refund request was timely, but it later contended in its position statement that the Taxpayers' refund request actually was untimely.

Section 40-2A-7(c)(2)(a) provides:

A petition for refund shall be filed with the department or an automatic refund issued pursuant to Section 40-29-71, or a credit allowed, within (i) three years from the date that the return was filed, or (ii) two years

from the date of payment of the tax, whichever is later, or, if no return was timely filed, two years from the date of payment of the tax. For purposes of this paragraph, taxes paid through withholding or by estimated payment shall be deemed paid on the original due date of the return.

(emphasis added).

The original due date for the filing of the Taxpayers' 2020 Alabama individual income tax return was April 15, 2021. However, because of an extension of the federal filing deadline for 2020 returns, Alabama taxpayers were not required to file their 2020 Alabama income tax returns until May 17, 2021. See "ADOR Issues Guidance on Income Tax Filing Deadlines" dated March 18, 2021. Here, the Taxpayers did not file their 2020 return on which they requested their refund until May 8, 2023. And the refund request involved taxes paid through withholding. Because the return was filed late, the Taxpayers had two years from the original due date to request their refund. See § 40-2A-7(c)(2)(a). Therefore, the determination of the timeliness of the Taxpayers' refund request hinges on whether the postponement of the deadline to file 2020 income tax returns affected the date on which withholding payments are deemed paid.

The Revenue Department, in its Position Statement, cites *State v. Pettaway*, 794 So. 2d 1153 (Ala. Civ. App. 2001), which explains:

The cardinal rule in statutory construction is to determine and give effect to the intent of the legislature as manifested in the language of the statute. *State v. Amerada Hess Corp.*, 788 So. 2d 179 (Ala. Civ. App. 2000) (citing *McClain v. Birmingham Coca-Cola Bottling Co.*, 578 So. 2d 1299 (Ala. 1991)). "Absent a clearly expressed legislative intent to the contrary, the language of the statute is conclusive. Words must be given their natural, ordinary, commonly understood meaning, and where plain language is used, the court is bound to interpret the language to

mean exactly what it says." *Ex parte State Dep't of Revenue*, 683 So. 2d 980, 983 (Ala. 1996) (citing *IMED Corp. v. Systems Eng'g Assocs. Corp.*, 602 So. 2d 344 (Ala. 1992)). "If the language of the statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect." *IMED Corp.* at 346; *see also Johnson v. Price*, 743 So. 2d 436 (Ala. 1999). In addition, the United States Supreme Court has held that a statute of limitations in the federal tax law must be strictly construed in favor of the Government. *Badaracco v. Commissioner*, 464 U.S. 386, 398, 104 S. Ct. 756, 78 L.Ed. 2d 549 (1984).

The Revenue Department notes that the legislature added the words "original due date" in Act 95-607. Thus, the Revenue Department argues that the legislature must have done so to clarify revenue procedures in Alabama and that the legislature must be presumed to have added the words for a "meaningful purpose." Quoting from the Merriam-Webster dictionary, the Revenue Department states that the word "original" is defined as "of, relating to, or constituting an original or beginning: initial." Therefore, the Revenue Department argues that, with respect to § 40-2A-7(c)(2)(a), the original, or initial, due date for filing a 2020 return was the statutory due date of April 15, 2021, and that the postponement of that due date did not change that fact.

For federal tax purposes, Treasury Regulation § 301.7508a-1(b)(4) provides: "The postponement of the deadline of a tax-related act does not extend the due date for the act, but merely allows the IRS to disregard a time period.... To the extent that other statutes may rely on the date a return is due to be filed, the postponement period will not change the due date of the return." Also, the Internal Revenue Service issued Notices 2020-23 and 2021-21 postponing the deadlines for filing federal returns for 2019 and 2020, respectively.

The Internal Revenue Service also recently issued Notice 2023-21, which provides, in part, that “absent the relief granted in this notice, although some calendar-year taxpayers may have until July 15, 2023,[] or May 17, 2024, to timely file a claim for credit or refund for their taxable years postponed [by the previous Notices], in order for the applicable lookback period to include all available amounts, taxpayers who did not receive an extension of time for filing a return must file a claim for credit or refund within three years of the due date of the return (generally April 15, 2020 or April 15, 2021, respectively).” Section 2 of Notice 2023-21. That Notice granted relief to taxpayers by stating that the periods of April 15, 2020, through July 15, 2020, and April 15, 2021, through May 17, 2021, would be disregarded in determining “the beginning of the lookback period for the purpose of determining the amount of a credit or refund ... relating to the tax for which the return filing or payment due date was postponed.” Section 3, ¶ B, of Notice 2023-21.

The Revenue Department argues that, because the federal statute of limitations does not include a reference to the “original due date,” the Internal Revenue Service was required to resolve the issue of the effect of the Covid postponements and extensions. The Revenue Department asserts that Alabama’s statute of limitations is not ambiguous and, therefore, no similar analysis is needed. The Revenue Department is correct.

Section 40-2A-7(c)(2)(a) unambiguously provides that “taxes paid through withholding ... shall be deemed paid on the original due date of the return.” Therefore, the Taxpayers’ withheld taxes were deemed paid on the original, or initial,

due date of April 15, 2021. Thus, the Taxpayers had until April 15, 2023, to file their request for a refund of 2020 income taxes. As stated, the Taxpayers did not request their refund until May 8, 2023.

Because the Taxpayers did not request their refund within the two-year period, the Revenue Department was required by statutory law to deny the refund request. The Revenue Department's denial of the Taxpayers' refund request is upheld, and judgment is entered accordingly.

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

Entered November 13, 2023.

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

cc: Kenneth O. Wynn
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