

**ALABAMA TAX TRIBUNAL**

BELLSOUTH  
TELECOMMUNICATIONS, INC., §  
Taxpayer, § DOCKET NO. CTY. 25-0066-LP  
v. §  
CITY OF MOBILE, ALABAMA. §

**FINAL ORDER DISMISSING APPEAL**

This appeal involves the denial by the Alabama Department of Revenue of a refund of sales and use tax for the periods January 2014 through December 2017.<sup>1</sup> The parties submitted briefs and stipulations of facts.

The City of Mobile argues that that the Tax Tribunal has no jurisdiction to hear this case because the appeal was filed untimely. The Taxpayer argues that it was not filed untimely or, alternatively, that estoppel prevents the City from asserting that the appeal is untimely.

FACTS

The Taxpayer filed separate petitions for refund with the City on February 21, 2017, February 20, 2018, and February 20, 2020. For several years, the Taxpayer and the City exchanged communications and information regarding the petitions. On September 11, 2024, the City sent a letter denying the petitions to the Taxpayer. The Taxpayer filed this appeal to the Tax Tribunal on January 1, 2025.

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<sup>1</sup> The Taxpayer’s refund petition regarding the tax period Dec. 1, 2018, to December

## LAW AND ANALYSIS

The Alabama Code, 1975, provides the following statute regarding the denial of a refund petition:

The department shall either grant or deny a petition for refund within six months from the date the petition is filed, unless the period is extended by written agreement of the taxpayer and the department. The taxpayer shall be notified of the department's decision concerning the petition for refund by first class mail, or by either United States mail with delivery confirmation or by certified mail, return receipt requested, sent to the taxpayer's last known address. If the department fails to grant a refund within the time provided herein, the petition for refund shall be deemed to be denied.

Ala. Code § 40-2A-7(c)(3).

Regarding the appeal of a denial of a refund petition, the Code states:

a. A taxpayer may appeal from the denial in whole or in part of a petition for refund by filing a notice of appeal with the Alabama Tax Tribunal within two years from the date the petition is denied, and the appeal, if timely filed, shall proceed as hereinafter provided for appeals to the Alabama Tax Tribunal.

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c. If an appeal is not filed with the Alabama Tax Tribunal or the circuit court within two years of the date the petition is denied, then the appeal shall be dismissed for lack of jurisdiction.

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31, 2020, is not part of this appeal.

Ala. Code § 40-2A-7(c)(5).

The Supreme Court of Alabama has held “that the State may be estopped from asserting that a taxpayer failed to timely appeal ‘where the untimeliness of the filing of their appeal was caused by misinformation furnished by the State’s officer and relied upon by the petitioners to their detriment.’” *Magee v. Home Depot U.S.A., Inc.*, 95 So. 3d 781, 788 (Ala. Civ. App. 2012) (quoting *Home Depot U.S.A, Inc. v. State of Alabama*, Docket No. S. 06-1079 (ALD 5/2/2007), quoting *Ex parte Four Seasons, Ltd.*, 450 So. 2d 110, 112 (Ala. 1984)). In applying this rationale, the Court has established that “if a governmental employee acting in his or her official capacity gives an individual or an entity erroneous information that is relied on in good faith by the individual or entity, and which directly results in the individual or entity failing to timely appeal, the government is estopped from asserting the statute of limitations as a defense.” *Id.* at 788-789.

In *Magee v. Home Depot*, the Revenue Department, after the taxpayer’s refund petition was deemed denied, “actively communicated” with the taxpayer concerning its refund claim and sent the taxpayer a refund denial letter notifying it of the date (i.e., two years from the date of the denial letter) in which the refund denial could be timely appealed. *See id.* at 789. The Alabama Court of Civil Appeals affirmed the Administrative Law Division’s finding that such communication was not required and, absent such communication by the department, “the burden would have been on [Home Depot] to determine how long it had to appeal, i.e., two years from when the petition

was deemed denied.” *Id.* at 789-790. The Court of Civil Appeals has explained: “Estoppel would not, of course, apply in all cases where a Department employee gives a taxpayer erroneous advice concerning the taxpayer's appeal rights. Rather, it must be applied (or rejected) on a case-by-case basis. For estoppel to apply, the advice or information must seem reasonable on its face, and the taxpayer must rely on the advice or information in good faith.” *Magee v. Home Depot U.S.A., Inc.*, 95 So. 3d 781 (Ala. Civ. App. 2012).

The Tax Tribunal has previously heard the issue of estoppel in similar cases. *See AT&T Services, Inc. v. Ala. Dep’t of Rev.*, Docket No. S. 20-1085-LP (Opinion & Preliminary Order Regarding Revenue Department’s Motion to Dismiss Untimely Appeal, June 28, 2022) (holding that the Revenue Department’s multiple email communications “reasonably indicate that [the examiner] saw the agreements as a means of extending the 6-month period in which the Department had to act on the Taxpayer’s refund petition, or its otherwise being deemed denied”) and *Russell County Community Hospital, LLC d/b/a Jack Hughston Memorial Hospital v. Russell County, Ala., Lee County, Ala., & Phenix City, Ala.*, Docket No. County/City 21-124-LP (Opinion and Preliminary Order, April 18, 2023) (holding that the local government’s “continuing to request additional documentation and working with the Taxpayer to consider and resolve the refund claim does not equate to ‘giv[ing] ... an entity erroneous information” and “does not warrant a finding of estoppel.”).

The petitions were deemed denied on August 21, 2017, August 20, 2018, and August 20, 2020, respectively, at the expiration of 6 months from filing of the petitions. Ala. Code, § 40-2A-7-(c)(3). The Taxpayer then had two years from each deemed denial date in which to appeal those denials to the Tax Tribunal or circuit court. Ala. Code § 40-2A-7(c)(5). The two-year appeal periods expired on August 21, 2019, August 20, 2020, and August 20, 2022, respectively. The Taxpayer filed this appeal, for all three denials, on or about January 1, 2025. Therefore, the Taxpayer did not timely file the appeal.

However, the Taxpayer argues that it should not be barred from appealing under the doctrine of estoppel.

The Taxpayer claims as grounds for the application of estoppel that (1) the City applied the wrong statute of limitations as the basis of its denial of the refund claims in its denial letter and (2) the City communicated with the Taxpayer continuously regarding the refund petitions since the Taxpayer's filing of the petitions.

Regarding the City's denial letter, there was no misrepresentation about the *appeal period*. And even if there had been, that letter was sent on September 11, 2024, over two years after the expiration of the latest appeal period. A misrepresentation cannot revive appeal rights that have expired. *Magee v. Home Depot*, 95 So. 3d at 789.

As to the ongoing communications between the parties, this case is similar to *Russell County, supra*, in which the local governments gave no erroneous information regarding the appeals process. Here, the City requested information and passed the

review of the petitions to different employees after the deemed denial date. However, as in *Russell County*, the City's continuing to work the appeal is not grounds for a finding of estoppel.

Therefore, the Tax Tribunal does not have jurisdiction to hear the appeal. Ala. Code § 40-2A-7(c)(5).

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

Entered June 12, 2026.

/s/ Leslie H. Pitman

LESLIE H. PITMAN

Chief Judge

Alabama Tax Tribunal

cc: Ginger Watkins  
Bellsouth Telecommunications, Inc.  
Cherlina Monteiro, Esq.  
Christopher Kern, Esq.