ALABAMA TAX TRIBUNAL

PERRIN AND SON, INC.,	§	
Taxpayer,	§	DOCKET NO. S. 24-0825-RC
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

ORDER GRANTING TAXPAYER'S APPLICATION FOR REHEARING IN PART

This case regards the Alabama Department of Revenue (the "Department") having issued a final assessment of sales tax, entered on October 30, 2024, in the amount $390,819.18 (the "Final Assessment") against Perrin and Son, Inc., an Alabama business corporation (the "Taxpayer"). The Tribunal entered its Opinion and Final Order on August 13, 2026 (the "Final Order"). The Taxpayer filed its Taxpayer's Application for Rehearing on August 26, 2026 ("the Rehearing Request"). The Rehearing Request is timely. For the reasons discussed herein, the Rehearing Request is granted in part and denied in part.

I. TAXPAYER'S ARGUMENTS

The Taxpayer makes two arguments in its Rehearing Request. First, the Taxpayer challenges the Tribunal's conclusion that the determination made by the Department to apply the 6-year statute of limitations at Ala. Code (1975), § 40-2A-7(b)(2)b (the "6-Year Statute") is presumptively correct by reason of § 40-2A-7(b)(5)c.3, which provides "[o]n appeal to the circuit court or to the Alabama Tax Tribunal, the final assessment shall be prima facie correct, and the burden of proof shall be on the taxpayer to prove the assessment is incorrect." (the "Presumption of Correctness").

Second, the Taxpayer notes the statement in the Confidential Audit Report that "[a] waiver is not required for this examination because the taxpayer has omitted more than 25% from the taxable base for the majority of the audit period, <u>except one month</u>." (emphasis added). The Taxpayer argues that this statement is in conflict with the Tribunal's determination that the 6-Year Statute applies to all the months under audit.

II. THE PRESUMPTION OF CORRECTNESS AS APPLIED TO THE STATUTE OF LIMITATIONS

The Taxpayer reasons that, at the time the Department made the decision to use the 6-Year Statute, it had yet to issue its Final Assessment, and thus the Presumption of Correctness did not apply to that decision. It further argues that the Tribunal should follow the federal practice the Tribunal referred to in the Final Order, whereby for purposes of challenging federal income tax assessments, the IRS has the burden of showing that a purported omission exceeds 25% of reported income.

The Taxpayer is correct to state that the Presumption of Correctness does not apply to the Department's preliminary assessments, nor to decisions or actions taken before issuing a final assessment. The triggering event for the Presumption of Correctness to become effective is the Department's issuance of its final assessment. The Presumption of Correctness is an allocation of the burden of proof before the Tribunal. Preliminary assessments and actions taken by the Department in the preparation of preliminary assessments or taken after the issuance of preliminary assessments but before final assessments are not appealable to the Tribunal, nor to Circuit Court. Therefore, it is not accurate to state that before a final assessment the burden of proof is on the Department so much as before a final assessment, the burden of proof does not exist. The burden of production is, of course, on the Department, as the Department must allege facts consistent with the existence of a tax liability (or the denial of a refund). But until the Tribunal or the Circuit Court can exercise jurisdiction over a disputed case, the decision-maker is the Department itself. Presumably, if the Department did not believe it had sufficient evidence to show that a tax liability existed, it would not have entered its preliminary assessment in the first instance or would have rescinded it before reaching the final assessment stage. The burden of proof as a concept only makes sense in the context of a decision rendered by a third-party court or tribunal of some kind.

Clearly, the Taxpayer's argument cannot apply to the substantive findings of a preliminary assessment once that assessment has been issued in final form; otherwise, the Presumption of Correctness would apply only to the small universe of determinations made after the preliminary assessment but before the final assessment. Rather, the issuance of a final assessment clothes the preliminary assessment with the Presumption of Correctness, including all the steps taken and determinations made by the Department up until that point.

The Taxpayer may be arguing that the Presumption of Correctness should not extend to threshold jurisdictional determinations, as opposed to the substantive amount of tax due. This line of argument may be colorable at the federal level, where the burden of proof is allocated to the IRS. However, for purposes of Alabama law the Tribunal rejects this notion, because this is a distinction without a difference, at least as applied to the 6-Year Statute. This is because to determine whether the 6-Year Statute applies, the Department must first calculate both the taxable base and the amount it alleges the Taxpayer omitted, which decisions are within the ambit of the Presumption of Correctness once a final assessment is issued. Two figures entitled to the Presumption of Correctness cannot produce a ratio between them that is somehow not entitled to the same deference. Following the Taxpayer's logic to its end would create an insoluble chicken-or-the-egg conundrum that the Tribunal declines to create.

As for the Taxpayer's argument relating to federal law and the general rule that Alabama laws patterned on the Internal Revenue Code should be interpreted consistently with federal precedent, the Tribunal also declines to reverse itself on this issue. The Presumption of Correctness statute is clear and unambiguous. Federal case law has developed otherwise because the Internal Revenue Code does not share with its Alabama counterpart such a clear and unambiguous command. If the legislature wants to exempt certain Department actions or determinations from the generally-applicable Presumption of Correctness, it knows how to do so and has done so in the past. *See* Ala. Code (1975), § 40-2B-2(k)(7) ("In the case of an issue of fact, the taxpayer shall have the burden of persuasion by a preponderance of the evidence in the record, <u>except that the Department of Revenue shall have the burden of persuasion in the case of an assertion of fraud</u> and in other cases provided by law.") (emphasis added). It has not done so with respect to this issue and the Tribunal must apply the law as written.

III. THE ONE MONTH NOT QUALIFYING AS A SUBSTANTIAL OMISSION

The Taxpayer is correct to observe the initial Confidential Audit Report stated that of the months under review, one such month did not contain a substantial omission. As noted in the Final Order, any month between April 2020 through April 2021 that did not contain a substantial omission would put that month beyond the Department's authority to assess, as both the ordinary 3-year statute of limitations and the Statute Waiver signed by the Taxpayer had expired.

The Department is directed to identify which month the Confidential Audit Report made reference to in this regard, and to determine how much tax and pre-final assessment interest that month represents out of the whole. The **Department** should produce that information to the Taxpayer and the Tribunal on or before **September 18, 2026**. Appropriate action will then be taken.

It is so ordered.

Entered September 1, 2026.

/s/ *Ralph M. Clements, III*
RALPH M. CLEMENTS, III
Associate Judge
Alabama Tax Tribunal

cc: Robert Mayeri, Esq.
Hilary Y. Parks, Esq.