

STATE OF ALABAMA,
DEPARTMENT OF REVENUE,

vs.

SHOE STATION, INC.
450 Bel Air Boulevard
Mobile, AL 36606,

Taxpayer.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 93-233

FINAL ORDER
ON APPLICATION FOR REHEARING

A Final Order was issued in this case on November 8, 1993 directing the Department to issue a refund to the Taxpayer for the year 1987. The Department timely applied for a rehearing.

The issue in dispute is whether the Taxpayer should be allowed a refund of 1987 tax as claimed on an amended return filed on May 16, 1991. The problem is that the amended return was filed outside of the normal three year statute for requesting refunds as set out at Code of Alabama 1975, §40-18-43, which required that a refund must be requested within three years from when the tax was paid.

The Taxpayer filed its original 1987 return and paid the tax reported thereon on March 16, 1988, or more than three years prior to when the amended return was filed on May 16, 1991.

The Taxpayer argues that the statute was extended because a consent was signed with the IRS extending the federal statute to June 15, 1991. However, a federal waiver does not also automatically extend the statute of limitations for Alabama purposes.

The Taxpayer's Bill of Rights brochure cited by the Taxpayer

does state that the Alabama statute of limitations is automatically extended by a federal waiver. However, that statement is unsupported by any statute, regulation or other authority and is incorrect. Thus, the brochure cannot be used as authority for granting an extension of the statute of limitations.

The Taxpayer also argues that the statute was extended by the IRS Closing Agreement dated March 27, 1991. As stated in the Final Order, the Closing Agreement constituted a final determination of liability by the IRS. The Taxpayer thus had one year from that date to apply for a refund as allowed by Code of Ala. 1975, §40-18-45(b)(3); provided, the refund must be based on changes made by the IRS audit.

The Final Order granted the refund on the assumption that the federal tax deduction claimed on the amended return and on which the refund is based had resulted from changes made by the IRS audit. I now understand that the deduction was only a correction of the original return and did not result from IRS changes. Consequently, although the amended return was timely filed within the allowed one year, the federal tax deduction claimed on the amended return cannot be used as the basis for a refund, and accordingly, the refund must be denied. The Final Order issued on November 8, 1993 is amended accordingly.

This Final Order On Application For Rehearing may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-

2A-9(g) and Department Reg. 810-14-1-.24.

Entered on December 16, 1993.

BILL THOMPSON
Chief Administrative Law Judge