

STATE OF ALABAMA,
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

vs.

§

WAYNE E. & BARBARA J. DUTT
3425 Collingwood Road
Hoover, AL 35226,

§

DOCKET NOS. INC. 94-187
INC. 93-358

§

Taxpayers.

FINAL ORDER

This case involves two separate appeals filed by Wayne E. & Barbara J. Dutt ("Taxpayers"). Docket No. Inc. 93-358 involves a disputed refund of 1988 income tax, and Docket No. Inc. 94-187 involves a disputed refund of 1986 income tax. The cases were consolidated and heard together on May 9, 1994. Wayne Dutt appeared for the Taxpayers. Jeff Patterson and Antoinette Jones represented the Department.

The Taxpayers conceded at the May 9 administrative hearing that the 1986 refund was properly denied by the Department. Consequently, only the 1988 refund remains in dispute.

The specific issue is whether the Taxpayers timely applied for a refund of the 1988 tax within three years from payment of the tax as required by Code of Ala. 1975, §40-18-43¹. That issue turns on

¹Section 40-18-43 was repealed effective October 1, 1992 and replaced by §40-2A-7(c)(2)a. The period in issue was prior to

whether \$500.00 remitted by the Taxpayers to the Department on April 15, 1989 constituted a "payment" of tax.

The facts are undisputed.

The Taxpayers paid estimated 1988 tax of \$1,000.00 on December 31, 1988. The Taxpayers subsequently applied for an extension to file their 1988 return on Form 4868A on April 15, 1989. The Taxpayers remitted a \$500.00 check to the Department along with the Form 4868A. The Department cashed the check and credited the Taxpayers' account for 1988 tax paid.

The Taxpayers subsequently filed their 1988 return in March 1993. The return reported a liability of \$1,206.00 and claimed an overpayment of \$294.00 which the Taxpayers indicated should be credited to their 1989 liability. The Department does not dispute the amount of the overpayment, but nonetheless denied the credit because it was not timely claimed within 3 years.

Section 40-18-43 required that a petition for refund must be filed (or credit claimed) "within 3 years from date of payment" of the tax.

The Department claims that the \$500.00 remitted on April 15, 1989 was paid when it was received by the Department. If so, then

October 1992, and thus §40-18-43 is applicable in this case.

the Taxpayers failed to timely claim the credit in issue within three years as required by §40-18-43.

The Taxpayers counter that the \$500.00 was a "transmittal of funds" or "deposit", and did not constitute a payment until their liability was finally determined when they filed their return in March 1993. If the Taxpayers are correct, then obviously the credit in issue was timely claimed.

Alabama law does not specify when a tax payment is made. "Paid" is defined at Code of Ala. 1975, §40-18-1(11), but that definition does not help in this case.

Words in a statute must be given their common, ordinary meaning. Ex parte Etowah County Board of Education, 584 So.2d 528.

In Hill v. United States, 263 F.2d 885, the court held "that the common use of the term 'payment' in both laymen's language and lawyers' language explains it is as 'something given to discharge a debt or obligation'", citing Busser v. U.S., 130 F.2d 537, 539.

As explained below, the \$500.00 in issue must be treated as a payment because it was intended to discharge the Taxpayers' 1988 liability.

The Taxpayers cite a U.S. Tax Court decision, Risman v. Commissioner, 100TC-13, March 16, 1993, in support of their position that a payment of tax cannot occur until a liability is finally fixed or determined. However, that is only one factor to be considered. Other factors are (1) the taxpayer's intent in

remitting the money, and (2) how did the government treat the remittance. Ewing v. U.S., 914 F.2d 499.

The Taxpayers in this case identified the \$500.00 remittance as a payment on paragraph 4 of Form 4868A, and also on Line 25 of their 1988 return. Importantly, the Department also treated the \$500.00 as a payment of tax. The Department cashed the \$500.00 check and credited the Taxpayers' account for 1988 tax paid. This case can thus be distinguished from Risman because in Risman the IRS treated the remittance as a deposit by putting it in a separate suspense account. The Department treated the \$500.00 in this case as a payment.

Code of Ala. 1975, §40-18-42(e) provides that a taxpayer may voluntarily elect to pay any tax prior to its prescribed due date.

The \$500.00 thus constituted a voluntary advance payment of the Taxpayers' 1988 tax liability. Consequently, a credit for the overpaid 1988 tax cannot be allowed because the Taxpayers failed to claim the credit within three years from the voluntary payment date.

The above considered, the Department properly denied the credits for both the 1986 and 1988 taxes claimed by the Taxpayers.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered on July 7, 1994.

BILL THOMPSON
Chief Administrative Law Judge