

WILLIS J. & DIANE M. BRAYMAN	§	STATE OF ALABAMA
48499 Highway 25 South		DEPARTMENT OF REVENUE
Sterrett, Alabama 35147,	§	ADMINISTRATIVE LAW DIVISION
Taxpayers,	§	DOCKET NO. INC. 95-411
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

FINAL ORDER

The Revenue Department denied a refund of 1992 income tax claimed by Willis J. and Diane M. Brayman ("Taxpayers"). The Taxpayers appealed to the Administrative Law Division, and a hearing was conducted on January 9, 1996. Willis J. Brayman appeared at the hearing with his CPA, Robert Webb. Assistant Counsel David Avery represented the Department.

The Taxpayers overpaid their 1992 Alabama income tax. The issue in dispute is whether the Taxpayers timely claimed a refund and a credit carryover of the amount overpaid.

The facts are undisputed.

The Taxpayers filed their 1991 Alabama income tax return on February 22, 1994. The return showed an overpayment of \$4,912.00.

The Taxpayers requested a refund of \$2,000.00, and directed the Department to credit the balance of \$2,912.00 toward their 1992 liability. The Department accepted the return, refunded the \$2,000.00 as requested, and applied the balance as a credit to the Taxpayers' 1992 liability.

The Taxpayers filed their 1992 Alabama income tax return on August 18, 1995. The return showed an overpayment of \$3,794.00.

That overpayment resulted from tax withheld in 1992 of \$4,087.00,

plus the credit carried over from 1991 of \$2,912.00, less the Taxpayers' 1992 liability of \$3,205.00, which resulted in the net \$3,794.00 overpayment.

The Taxpayers requested a refund of \$1,794.00, and directed the Department to apply the balance of \$2,000.00 to their 1993 liability. The Department denied both the refund and the requested credit carryover to 1993 because they were not timely claimed under Code of Ala. 1975, §40-2A-7(c)(2)a., as amended by Act 95-607, effective July 31, 1995. That section, as amended, reads as follows:

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.

The Department argues that because the Taxpayers' 1992 return was not timely filed, then 40-2A-7(c)(2)a. requires that any amount overpaid for that year must be claimed within two years from when the tax was paid. The statute further provides that taxes paid by withholding or estimated payments are deemed paid on the original due date of the return. The Department treated the credit carryover from 1991 to 1992 as an estimated payment. The Department thus argues that the taxes paid either through withholding and estimated payment for 1992 must be deemed paid on April 15, 1993, the due date of the 1992 return. Consequently, the

amount cannot now be refunded or credited because the Taxpayers failed to apply for a refund or credit within two years from that date.

To begin, I agree that §40-2A-7(c)(2)a., as amended by Act 95-607, is controlling in this case. The effective date of Act 95-607 was July 31, 1995. The Taxpayers requested the refund and credit in issue on their 1992 return, which was not filed until August 18, 1995, after the effective date of Act 95-607.

Applying §40-2A-7(c)(2)a., as amended, I agree with the Department that the Taxpayers failed to timely claim a refund or credit of the tax withheld during 1992. However, I disagree with the Department concerning the amount overpaid in 1991 that was carried over as a credit to 1992.

The Taxpayers paid \$4,087.00 through withholding in 1992. Section 40-2A-7(c)(2)a. clearly provides that if a return is not timely filed, then tax overpaid by withholding during the year must be claimed within two years from the original due date of the return. Because the Taxpayers failed to claim the amount withheld during 1992 within two years from the return due date, April 15, 1993, that amount cannot now be refunded or allowed as a credit pursuant to §40-2A-7(c)(2)a.

Concerning the amount carried over from 1991 as a credit to 1992, the Department characterizes that amount as an estimated payment, which it claims must also be treated the same as tax paid through withholding pursuant to §40-2A-7(c)(2)a. I disagree. The

credit should not be treated as an estimated payment.

"Estimated payment" is a term of art relating to the declaration of quarterly estimated tax payments provided for in Code of Ala. 1975, §§40-18-82 and 40-18-83. Those sections require generally that if a taxpayer has sufficient non-wage income during a year, he must report and make estimated quarterly payments during the year. Clearly, an amount overpaid in one year that is carried over as a credit to a subsequent year is not an estimated payment within that context. There is no estimated liability to which the credit can be applied. Consequently, the 1991 credit used to pay the 1992 liability should not be deemed paid on the original due date of the 1992 return. Rather, tax overpaid in one year that is carried over as a credit to a subsequent year should be treated as paid when the subsequent year's return is filed and the taxpayer's liability for that year is initially declared. Ameel v. U.S., 426 F.2d 1270 (1970).

In this case, the Taxpayers' 1992 return was filed, and the credit applied (tax paid), in August 1995. The return also claimed a refund and credit carryover of the amount overpaid. Those claims were thus timely relating to the 1992 tax paid by credit.

The Taxpayers owed \$3,205.00 in 1992. That liability was satisfied by the \$4,087.00 paid through withholding. However, the balance of \$882.00 overpaid through withholding cannot be refunded or credited, as explained above. The \$2,912.00 paid by credit can

be allowed. The Department should refund \$1,794.00, as requested by the Taxpayers, and carryover the balance of \$1,118.00 as a credit to 1993. Additional interest should also be paid from the date the credit was applied (tax paid), that is, the date the 1992 return was filed, August 18, 1995. The Taxpayers may, however, petition that the entire amount be refunded.

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

Entered March 5, 1996.

BILL THOMPSON
Chief Administrative Law Judge