

WALTER W. & SHIRLEY J. STEPHENS	§	STATE OF ALABAMA
1415 Dogtown Road S.E.		DEPARTMENT OF REVENUE
Ft. Payne, Alabama 35967,	§	ADMINISTRATIVE LAW DIVISION
Taxpayers,	§	DOCKET NO. INC. 96-127
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

FINAL ORDER

The Revenue Department denied a refund of 1992 income tax claimed by Walter W. and Shirley J. Stephens ("Taxpayers"). The Taxpayers appealed to the Administrative Law Division, and a hearing was conducted on April 9, 1996. The Taxpayers represented themselves at the hearing. Assistant Counsel David Avery represented the Department.

The Taxpayers overpaid their 1992 Alabama income tax by withholding during the year, and through a \$5,000.00 credit carried over from 1991. The issue in dispute is whether the Taxpayers timely claimed a refund (and a credit carryover to 1993) of the amount overpaid.

The facts are undisputed.

The Taxpayers filed their 1991 Alabama return on April 29, 1994. The Taxpayers elected to credit \$5,000.00 of the amount overpaid in 1991 toward their 1992 liability.

The Taxpayers subsequently filed their 1992 Alabama return on October 12, 1995. The return showed a liability of \$948.00. The Taxpayers had paid \$2,718.50 through withholding during 1992. When that amount withheld was added to the \$5,000.00 credit carried over

from 1991, the total amount paid in 1992 was \$7,718.50, for a net overpayment of \$6,770.50. The Taxpayers directed the Department to refund \$1,770.50, and carryover the \$5,000.00 balance to their 1993 liability. The Department denied both the refund and the requested credit carryover to 1993 because, according to the Department, they were not timely claimed as required by 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 above statute provides in pertinent part that if a taxpayer fails to timely file a return, then all tax paid through withholding or by estimated payment during the subject year is deemed paid on April 15 of the next year. The taxpayer must petition for a refund or credit of the amount overpaid within two years of that date.

The specific issue in this case is whether the Taxpayers paid their 1992 by withholding or estimated payment. The \$2,718.50 withheld in 1992 was obviously paid through withholding. A refund of that amount is thus barred by the two year statute. However, as explained below, the \$5,000.00 credited from 1991 to 1992 was not

an "estimated payment" within the context of the statute. Rather, the amount credited to 1992 should be deemed paid when the 1992 return was filed and the credit applied, in which case the refund of that amount (or credit carryover) was timely claimed.

This same issue was decided in Brayman v. State, Admin. Law Docket Inc. 95-411, decided January 9, 1996. The Final Order in Brayman reads in pertinent part as follows:

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 (October 12, 1995 in this case), 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 (\$2,718.50 in this case) 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).

Brayman, at page 2.

The Department applied for a rehearing in Brayman, and a Final Order Denying Application For Rehearing was issued on March 26, 1996. That Order reads in pertinent part as follows:

The Department argues that the amount must be treated as an estimated tax payment because the Alabama return refers to the credit as an "estimated tax". Line 30 of the return reads - "Amount of line 29 (amount overpaid) to be applied to your 1992 estimated tax." But the fact that the return uses the term "estimated tax" does not mean that the amount is an "estimated payment" within the scope of §40-2A-7(c)(2)a. The Department's own instructions concerning Line 30 of the return (see, page

2 of Department's Application for Rehearing) also contradicts the Department's position in this case - "The amount entered on this line (Line 30) can only be claimed as a credit on your 1992 Alabama return." (emphasis added).

Section 40-2A-7(c)(2)a. was amended by Act 95-607 to rectify a specific loophole. Prior to Act 95-607, if a taxpayer overpaid income tax through withholding or estimated payments during the subject year, then the taxpayer had a full three years from when his return was filed to claim a refund of those amounts, even if the return was filed late. Act 95-607 added the "deemed paid" language relating to withholding and estimated tax payments to eliminate the loophole. Clearly, the amendment was intended to apply only to tax withheld during the subject year pursuant to Code of Ala. 1975, §§40-18-70 et seq. and tax paid by estimated payments during the subject year pursuant to Code of Ala. 1975, §§40-18-82 and 40-18-83. An amount overpaid in a prior year and carried over as a credit to a subsequent year is not an estimated payment within the meaning of §40-2A-7(c)(2)a.

Brayman, at page 1.

The Brayman rationale is applicable in this case.

The Taxpayers' 1992 liability was \$948.00. That liability was satisfied by the \$2,718.50 paid through withholding. However, the balance of \$1,770.50 paid through withholding cannot be refunded or credited, as explained above. The \$5,000.00 paid by credit can, however, be allowed as a credit carryover to 1993. The Taxpayers, at their option, may petition for the \$5,000.00 to 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 April 12, 1996.

BILL THOMPSON

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Chief Administrative Law Judge