

ANTOINETTE S. MATTHEWS
530 Hillyer High Road
Anniston, Alabama 36207,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

§

§

§

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 96-139

FINAL ORDER

The Revenue Department denied a refund of 1992 income tax requested by Antoinette S. Matthews ("Taxpayer"). The Taxpayer appealed to the Administrative Law Division, and a hearing was conducted on April 16, 1996. CPA Charles E. King represented the Taxpayer. Assistant Counsel Antoinette Jones represented the Department.

The issue in this case is whether the Taxpayer is time-barred from obtaining a refund or credit of income tax overpaid by her through estimated payments in 1992. The applicable statute of limitations is set out at Code of Ala. 1975, §40-2A-7(c)(2)a.

The Taxpayer is a 77-year old widow living in Anniston, Alabama. The Taxpayer's husband had always handled the couple's taxes before he passed away in 1991. The Taxpayer thereafter hired a local CPA firm to prepare her quarterly estimates and also her annual returns.

The Taxpayer timely filed her 1992 quarterly estimated returns and paid the amounts due as indicated. The estimated payments resulted in an overpayment of \$1,400.00 for the year. However, because she did not owe any additional tax, the Taxpayer apparently

did not realize that she was also required to file her annual 1992 return. Consequently, her 1992 return was not filed until December 14, 1995, after the Taxpayer's CPA discovered that no return had been filed. The 1992 return requested that the \$1,400.00 overpaid through estimated payments in 1992 should be carried over as a credit to 1993.

The Taxpayer also paid \$363.00 in quarterly estimated payments during 1993. The Taxpayer's 1993 return was filed along with her 1992 return in December 1995, and showed a liability of \$2,825.00.

The return indicated tax paid of \$1,763.00 (\$1,400.00 credited from 1992 and \$363.00 paid through estimated payments), leaving a balance due of \$1,062.00.

However, the Department denied the \$1,400.00 credit carryover from 1992 because it was not timely claimed pursuant to §40-2A-7(c)(2)a. That statute, as amended by Act 95-607, 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 Taxpayer's representative argues that the Taxpayer should not be denied the credit because of a good faith mistake.

I sympathize with the Taxpayer. However, §40-2A-7(c)(2)a. is

clear that if a taxpayer fails to timely file a return, which the Taxpayer did in this case, then any tax overpaid through estimated quarterly payments or through withholding during the subject year must be deemed paid on the due date of the subject year return, which is April 15 of the next year. A taxpayer then has two years from that date to request a refund or claim a credit of the amount overpaid. The Taxpayer admittedly failed to claim the \$1,400.00 overpaid in 1992 as a credit carryover to 1993 within that two year period. Consequently, the \$1,400.00 credit cannot now be allowed.

The Taxpayer's CPA was provided copies of two recent Administrative Law Division decisions involving §40-2A-7(c)(2)a. Stephens v. State of Alabama, Admin. Law Docket Inc. 96-127, decided April 12, 1996 and Brayman v. State of Alabama, Admin. Law Docket Inc. 95-411, decided January 9, 1996.

Those cases can be distinguished from this case. The tax in dispute in Brayman and Stephens was paid by a credit carried over from a prior year. The Administrative Law Division ruled in both cases that the tax paid by credit was not an "estimated payment" within the context of §40-2A-7(c)(2)a. The two year statute relating to withholding and estimated payments thus did not apply.

On the other hand, the Taxpayer in this case overpaid her 1992 tax through estimated quarterly payments during the year. The two year statute relating to estimated payments is clearly applicable.

Although not directly in issue in this case, the Department

has apparently entered a 1993 final assessment against the Taxpayer for the \$1,400.00 in question, plus penalty and interest. The additional tax plus interest is due, but because the Taxpayer clearly acted in good faith in attempting to file and pay the correct amount due, any penalty included in the 1993 assessment should be waived. The Taxpayer should either appeal the final assessment for that purpose, or, if the appeal period has run, the Taxpayer can pay the assessment in full and then petition for a refund of the penalty.

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

Entered April 25, 1996.

BILL THOMPSON
Chief Administrative Law Judge