

M. D. PRICE BUILDER, INC. § STATE OF ALABAMA
1621 University Boulevard B-1 DEPARTMENT OF REVENUE
Mobile, Alabama 36609, § ADMINISTRATIVE LAW DIVISION
Taxpayer, § DOCKET NO. CORP. 96-184
v. §
STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

The Department denied refunds of income tax requested by M. D. Price Builder, Inc. and Lancri Investments, Inc. (together "Taxpayers") for the fiscal year ending October 31, 1991. The Taxpayers appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(c)(5)a. A hearing was conducted on August 7, 1996 in Mobile, Alabama. CPA Jerome C. Olsen represented the Taxpayers. Assistant Counsel Duncan Crow represented the Department.

This case involves two issues:

(1) Does Price Builder owe Alabama income tax for the subject year on interest income imputed to Price Builder from Lancri in that year; and

(2) If Price Builder is liable for tax on the imputed interest, should Lancri be allowed to deduct the imputed interest and receive a corresponding refund for the subject year. That issue turns on whether Lancri timely requested a refund pursuant to Code of Ala. 1975, §40-2A-7(b)(2)g.2. or Code of Ala. 1975, §40-2A-7(c)(2)a.

Price Builder and Lancri are sister corporations owned by the

same individual. The IRS audited Price Builder and imputed interest income to Price Builder from Lancris for the year ending October 31, 1991. The IRS also allowed Lancris to deduct the imputed interest, which resulted in a corresponding refund to Lancris for the year. Price Builder subsequently paid \$1,355 in additional federal tax, and Lancris filed an amended return and received a corresponding refund.

The Revenue Department received the IRS adjustments concerning Price Builder on July 5, 1995. The Department contacted the Taxpayers' CPA, and the parties agreed that if Price Builder paid the additional tax resulting from the IRS adjustment, Lancris would be allowed a corresponding refund. The Department examiner in Mobile contacted the Income Tax Division in Montgomery, which confirmed that Lancris would be entitled to a refund. Price Builder accordingly paid the additional tax due, and Lancris petitioned for a refund in August 1995.

The Department denied the refund to Lancris because it was not timely claimed within three years as required by Code of Ala. 1975, §40-2A-7(c)(2)a. In response, Price Builder requested a refund of the additional tax it had paid, claiming that the imputed interest was not taxable in Alabama. The Department also denied that refund. The Taxpayers appealed to the Administrative Law Division.

Concerning the Price Builder refund, Price Builder argues that the refund should be issued because the concept of imputed interest income is not applicable in Alabama. I disagree.

Gross income for Alabama purposes at Code of Ala. 1975, §40-

18-14 is modeled generally after gross income for federal purposes at 26 U.S.C. §61. In such cases, federal authority and interpretations are applicable in Alabama. Best v. State, Dep't of Revenue, 417 So.2d 197 (Ala.Civ.App. 1981). Consequently, the concept of imputed interest income for federal purposes is equally applicable in Alabama. Price Builder thus correctly paid additional Alabama tax on the imputed interest income from Lancriis. No refund is due.

Concerning the Lancriis refund, I agree that the refund was not timely claimed within three years in accordance with Code of Ala. 1975, §40-2A-7(c)(2).

However, the refund was timely claimed pursuant to the special one year statute of limitations for claiming refunds based on IRS changes at Code of Ala. 1975, §40-2A-7(b)(2)g.2. That section provides generally that if the IRS changes a taxpayer's federal liability for a subject year, and the change results in an overpayment of Alabama tax, the taxpayer has one year to claim a refund with the Department. Lancriis claimed the refund within one year after the federal audit changes that resulted in the refund being due. The Department is accordingly directed to issue the refund to Lancriis.

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

Entered October 31, 1996.

BILL THOMPSON

4

Chief Administrative Law Judge