

SIGN FACES, INC.
P.O. Box 320096
Birmingham, AL 35232,

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

DOCKET NO. CORP. 98-289

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed corporate income tax against Sign Faces, Inc. (Taxpayer) for 1993 through 1995. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, § 40-2A-7(b)(5)a. A hearing was conducted on September 9, 1998. Christopher Hood and Sidney Phillips represented the Taxpayer. Assistant Counsel Jeff Patterson represented the Department.

The Alabama Enterprise Zone Act grants an income tax credit for new investments in an enterprise zone as follows: 10 percent on first \$10,000 invested, five percent on next \$90,000 invested, and two percent on remaining investment. Code of Ala. 1975, § 41-23-24(a)(3). The issue in this case is whether the 10 percent and 5 percent rates apply annually to the first \$10,000 and \$90,000, respectively, invested in each year, or only one time to the first \$10,000 and \$90,000 invested.

The Taxpayer manufactures sign faces, sign cabinets, and channel letters. The Taxpayer began looking for a new facility in the Birmingham, Alabama area in 1989. The Taxpayer also learned that the Enterprise Zone Act granted an Alabama income tax credit for new investments in a designated enterprise zone. The Taxpayer consequently located in a designated enterprise zone in Birmingham, Alabama.

The Taxpayer invested approximately \$300,000 for land, a building, and new equipment in the enterprise zone in 1989. The Taxpayer made new investments in the enterprise zone every year from 1990 through 1994. The Taxpayer invested approximately \$650,000 on a new building and new equipment in the enterprise zone in 1995.

The Taxpayer claimed the income tax credit allowed at § 41-23-24(a)(3) on its Alabama income tax returns for 1989 through 1995. The Taxpayer claimed 10 percent of the first \$10,000 invested in each year, 5 percent of the next \$90,000 invested in each year, and 2 percent of the remainder.

The Department audited the Taxpayer's 1993 through 1995 returns and reduced the credit to 2 percent in each year. The Department contends that the 10 percent and 5 percent rates apply only once to the first \$100,000 invested in an enterprise zone, not annually. The Department thus allowed only a 2 percent credit in the subject years because the Taxpayer had previously invested more than \$100,000 in the enterprise zone. The reduced credits resulted in the final assessment in issue.

This is a difficult case involving statutory construction. A primary rule of statutory construction is that the plain language of a statute must be followed. Ex parte Madison County, Alabama, 406 So.2d 398 (1981).

However, the plain language of § 41-23-24(a)(3) sheds little light on the issue in this case. Another primary rule of statutory construction

is that a statute must be construed to follow the intent of the Legislature. Kimberly-Clark Corp. v. Eagerton, 445 So.2d 566 (Ala.Civ.App.1983). But again, the statute does not

indicate if the Legislature intended the 10 percent and 5 percent rates to apply annually, or only one time.

A tax credit or exemption statute should be construed for the Department and against the taxpayer. Brundidge Milling Co. v. State, 228 So.2d 475 (1969). On the other hand, great weight should be given to the interpretation of a statute by the agency charged with administering the statute, especially if the statute has been re-enacted by the Legislature without change. State, Department of Revenue v. Jones Mfg. Co., Inc., 589 So.2d 206 (1990), reversed Ex parte Jones Mfg. Co., Inc., 589 So.2d 208, on remand 589 So.2d 212 (1990).

The Department has not promulgated a regulation concerning this issue. The Department also never challenged a taxpayer's computation of the credit before this case. The Department did, however, promulgate Schedule EZ shortly after the Enterprise Zone Act was passed in 1987. The Schedule EZ, entitled **Alabama Enterprise Zone Credit Computation Schedule**, must be submitted with a taxpayer's annual return. The credit for new investments is addressed in Part III of Schedule EZ. The relevant portion of Part III is as follows:

- 2 Enter the total amount expended for new investments or for improvements to an existing business in the designated enterprise zone..... 2 _____
- 3 **Maximum Credit Computation:**
 - a. 10% on first \$10,000 invested 3a _____
 - b. 5% on next \$90,000 invested 3b _____
 - c. 2% on remaining investment 3c _____
- 4 **Total.** Add lines 3a, 3b, and 3c. Enter result here and also on line 8, Part IV

The total from line 4 on Part III is carried to line 8 on Part IV and added to the other credits allowed by the Enterprise Zone Act. The total is entered on line 10 of Part IV, which is entitled **Total Credit Earned This Year**.

The Department examiner testified that the correct amount to be entered on line 2 of Part III is the amount of new investments the taxpayer made in an enterprise zone during the subject tax year. The 10

percent and 5 percent rates are then applied to the first \$10,000 and \$90,000, respectively, invested during the year. The 2 percent rate is applied to the balance. By requiring all taxpayers to use Schedule EZ, the Department not only has allowed, but has required all qualifying taxpayers to compute their annual credit by applying the 10 percent and 5 percent rates to the first \$10,000 and \$90,000 invested in each year. The Legislature amended the Enterprise Zone Act in 1996 by Act 96-206. Section 40-23-24(a)(3) was not changed at that time, which indicates the Legislature's tacit approval of the method by which the credit had been allowed. That interpretation is also accepted by the Alabama Department of Economic and Community Affairs. (Taxpayer Exhibit 2). Consequently, the Department's long-standing interpretation of how the credit must be computed should be followed.

The above conclusion is supported by the rule of construction that a statute should be construed to best accomplish its purpose. Ex parte Sanders, 612 So.2d 1199 (1983). The credit is intended to encourage continued new investment in an enterprise zone. That purpose is better served if the 10 percent and 5 percent rates are applied to new investments in each year.

The final assessment in issue is voided.

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

Entered December 16, 1998.

BILL THOMPSON
Chief Administrative Law Judge

BT:ks

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