SARAH KIDD, D/B/A Village Wallpaper 2600 Willbanks Drive Gadsden, AL 35901,	'	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
Taxpayer,	'	DOCKET NO. S. 98-483
v.	'	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	'	

FINAL ORDER

The Revenue Department denied a refund of City of Gadsden sales tax requested by Sarah Kidd, d/b/a Village Wallpaper (ATaxpayer@), for April and May 1989 and August 1989 through April 1990. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, '40-2A-7(c)(5)a. A hearing was conducted on April 7, 1999. James M. Sizemore, Jr. represented the Taxpayer. Assistant Counsel Wade Hope represented the Department.

The Taxpayer paid the tax in issue in August 1998, after the Department had issued a writ of garnishment against the Taxpayer=s bank account. The issue in dispute is whether the collection of the tax was time-barred.

The Revenue Department assessed the Taxpayer for the tax in issue in December 1991. The Taxpayer failed to appeal within 30 days, as required by Code of Ala. 1975, '40-2-22 (now '40-2A-7(b)(5)a.)

The Department issued a writ of garnishment in early 1998 against the Taxpayer=s bank account for collection of the amount owed. Before the bank

acted on the garnishment, the Taxpayer paid the amount due of $6,892.01 in August 1998.

The Taxpayer later applied for a refund, claiming that the statute of limitations for collecting the tax had expired before the tax was paid. The Department denied the refund. The Taxpayer appealed.

The Department argues that the tax was properly collected within ten years as allowed by Code of Ala. 1975, '40-29-51. That statute was enacted in 1983 as part of the Tax Enforcement and Compliance Act (ATECA@). Section 40-29-51 provides that any tax imposed in Title 40, Code of Ala. 1975 may be collected within ten years after a final assessment was entered.[1]

The Taxpayer argues that the ten year statute does not apply in this case because '40-29-51 applies only to taxes assessed pursuant to Title 40. The municipal sales tax in issue was levied pursuant to Title 11. The Taxpayer also argues that '40-29-51 was not incorporated by reference to apply to the collection of municipal sales taxes. The Taxpayer contends that because neither '40-29-51 nor any other specific statute of limitations controls the collection of municipal taxes, the general five year statute at Code of Ala. 1975, '6-2-35 applies. That statute requires that all actions by the State for Arecovery of amounts claimed for licenses,

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[1]The Alabama Supreme Court ruled in Ex Parte State, Department of Revenue, 667 So.2d 1372 (Ala. 1995), that the ten year statute at '40-29-51 applies to the collection of all State taxes assessed after the January 1, 1984 effective date of TECA, and to the collection of all pre-TECA assessments that were not time barred on the effective date of TECA.

franchise taxes, and other taxes...@ must be commenced within five years. The Taxpayer thus argues that because the Department failed to collect the tax in issue within five years, the collection was time-barred, and the tax must be refunded.

Code of Ala. 1975, '40-29-2 provides generally that TECA applies to all taxes levied in Title 40 or any other title. But the Taxpayer is correct that '40-29-51 is limited in scope by its specific language to only taxes assessed pursuant to Title 40. Where a statute of general application conflicts with a statute of specific application, the statute of specific application controls. Karrh v. Board of Control of Retirement, 679 So. 2d 669 (Ala. 1996); Murphy v. City of Mobile, 504 So.2d 243 (Ala. 1987).

I disagree, however, with the Taxpayer=s claim that '40-29-51 was not incorporated by reference to apply to the collection of municipal sales and use taxes.

The City of Gadsden municipal sales tax was levied pursuant to Code of Ala. 1975, '11-51-200, et seq. Code of Ala. 1975, '11-51-207 allows the governing body of a municipality to adopt an ordinance or resolution requiring the Revenue Department to administer and collect any taxes levied by the municipality. That section further provides that the administration and collection of the tax Ashall be made under the same provisions and procedures provided for by Sections 11-51-180 through 11-51-185.@

Section 11-51-180 read as follows during the period in issue, with the pertinent

parts underlined:

> AThe State Revenue Department shall collect any municipal privilege license taxes (and by reference municipal sales and use taxes) levied or assessed by any city or town under the provisions of a municipal ordinance duly promulgated and adopted by the governing body of the city or town..., whenever such levy parallels the state levy except for the rate of the tax and is subject to all definitions, exceptions, exemptions, proceedings, requirements, rules, regulations, provisions, penalties, fines, punishments, and deductions as are applicable to the state sales and use taxes and the state tax on the rental of rooms, lodgings and accommodations as levied respectively by Sections 40-23-1, 40-23-2, 40-23-4, 40-23-6 through 40-23-31, 40-23-34 through 40-23-36, Article 2 of Chapter 23 of Title 40, and Sections 40-26-1 through 40-26-20, or as otherwise provided by law, except where inapplicable or where herein otherwise provided, including provisions for enforcement and collection of the taxes.@

The ten year collection statute of limitations at '40-29-51 is a State provision for the collection of tax. Consequently, '40-29-51 was incorporated by reference during the period in issue to apply to the collection of municipal sales and use taxes.

Section 11-51-180 was amended in 1998 by Act 98-192 (the ALocal Tax Simplification Act of 1998"). That Act added the phrase Astatutes of limitation@ to the list of State provisions made applicable to municipal taxes. The Act also removed the phrase Aincluding provisions for enforcement and collection of the taxes.@ See,

'11-51-180(a), as amended.[2]

The Taxpayer argues that '11-51-180, as it read before the 1998 amendment, did not incorporate '40-29-51 by reference because if it had done so, it would have been unnecessary for the Legislature to include the phrase Astatutes of limitation@ in the 1998 amendment. I disagree.

In substance, Act 98-192 did not change '11-51-180 as it relates to the applicability of the State collection provisions, including '40-29-51, to municipal sales and use taxes. Before the 1998 amendment, '11-51-180 clearly incorporated the State collection statutes by reference to apply to the collection of municipal taxes. The 1998 amendment only removed the general reference to Aprovisions for enforcement and collection of the taxes@, and replaced it with the direct reference to Astatutes of limitation@. In both cases, however, the statute of limitations at '40-29-51 for collection of State taxes was made applicable by reference to municipal taxes.

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[2]The 1998 amendment divided '11-51-180 into subparagraphs (a) and (b). Subparagraph (a) applies in this case because it relates to municipal sales and use taxes. Subparagraph (b) applies to municipal lodgings taxes.

The clear intent of the Legislature, as expressed in both the pre-amendment and the post-amendment version of '11-51-180, was for the State collection provisions to apply to municipal taxes. The taxes in issue were thus properly Acollected@ within the ten year statute provided by '40-29-51. The Department=s denial of the refund in issue is affirmed.

Both parties raised various other arguments in their briefs and reply briefs. Those arguments are pretermitted by the above holding.

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

Entered July 8, 1999.

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BILL THOMPSON
Chief Administrative Law Judge

BT:ks

cc: J. Wade Hope, Esq.
James M. Sizemore, Jr., Esq.
Ginger Buchanan