

JUDY DANIELS
1620 GEORGIA ROAD
WETUMPKA, AL 36092-5433,

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STATE OF ALABAMA
ALABAMA TAX TRIBUNAL

DOCKET NO. INC. 14-819

Taxpayer, §

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER ON TAXPAYER'S APPLICATION FOR REHEARING

This appeal involves final assessments of 2004 through 2009 income tax entered against the above Taxpayer. A Final Order was entered on February 26, 2015 affirming the 2008 final assessment and voiding the 2004, 2005, 2006, 2007, and 2009 final assessments. The Taxpayer timely applied for a rehearing.

The Taxpayer asserts in her application that the Department violated various provisions of the Alabama Taxpayer Bill of Rights and Uniform Revenue Procedures Act, Code of Ala. 1975, §40-2A-1, et seq. Specifically, the Taxpayer claims that the Department never provided her with a written description of the basis for the assessments, as required by §40-2A-4(a)(3)a; that it never provided her with an explanation or computation as to how it arrived at the 2008 tax due; that it failed to conduct an informal conference concerning various petitions for review filed by the Taxpayer, as required by §40-2A-7(b)(4)a.; and that it improperly issued a notice of intent to offset her federal income tax refund to satisfy her 2008 liability while the 2008 final assessment was pending on appeal.

This case is unusual because the Department's assessment process did not begin as usual with an audit or review of the Taxpayer's Alabama return or her records. Rather,

it began when a Department employee in the Income Tax Division noticed an article in a local newspaper indicating that the Taxpayer had pled guilty to embezzling funds from her employer. The Department thereafter obtained court documents from the Taxpayer's criminal case that showed the amount the Taxpayer had embezzled each year from 2004 through 2009. Using the above information, the Department entered a 2011 preliminary assessment against the Taxpayer and her husband on February 19, 2014 based on the entire amount embezzled by the Taxpayer. It subsequently entered preliminary assessments for 2004 through 2008 against the Taxpayer and her husband, jointly, on May 19, 2014, and a preliminary assessment for 2009 against the couple, jointly, on June 3, 2014. None of the above preliminary assessments were made final. Rather, the Department subsequently entered preliminary assessments and then final assessments against the Taxpayer, individually, for all of the years in issue.

The above course of events is somewhat unusual. In any case, it does appear that the Taxpayer's procedural objections are for the most part well-founded. There is no evidence the Department provided the Taxpayer with a written description of the basis for the assessments. The Department apparently also never explained to the Taxpayer how it computed the 2008 tax due, although it should be self-evident that the tax due was based on the amount of money embezzled in that year. The Department also did not conduct an informal conference or conferences, as requested by the Taxpayer. Finally, the Department erroneously issued the Taxpayer a federal refund offset notice.

The Taxpayer argues that because the Department failed to comply with the various procedural provisions in the Taxpayers' Bill of Rights at §40-2A-4, "appropriate action (should) be taken to establish the rights of Taxpayers by requiring the Department to

comply with the law.” Taxpayer’s Application for Rehearing at 3. There is, however, nothing the Department can do at this point to correct its past failures.

Section 40-2A-4(c) addresses the consequences of the Department’s failure to comply with the provisions in that section, as follows:

(c) Department failure to comply with this section. The failure of the department to comply with any provision of this section shall not prohibit the department from assessing any tax as provided in this chapter, nor excuse the taxpayer from timely complying with any time limitations under this chapter. However, if the department fails to substantially comply with the provisions of this section, the commissioner shall, upon application by the taxpayer or other good cause shown, abate any penalties otherwise arising from the examination or assessment.

As indicated, the Department’s failure to comply with a provision or provisions in §40-2A-4 does not prohibit the Department from assessing a taxpayer for the tax due. It does, however, allow the abatement of any penalties.

The Taxpayer points out that Code of Ala. 1975, §40-2B-2(k)(3) provides that a Tribunal judge may “grant appropriate relief to any party, if a party refuses to comply with any regulation or statute concerning appeals before the Alabama Tax Tribunal. . . .” The Department did not, however, fail to comply with any regulation or statute concerning an appeal before the Tribunal. Rather, it only failed to comply with some of the pre-appeal provisions in §40-2A-4. In any case, the Taxpayer has clearly already been granted appropriate relief under the circumstances. And any procedural deficiencies that occurred within the Department were cured when the Taxpayer appealed to and had her case heard by the Tax Tribunal. *State of Alabama v. V. G. Overby*, 89 So.2d 525 (1956); *House v. State of Alabama*, Docket Inc. 05-500 (Admin. Law Div. 6/23/2005).

The 2008 tax and interest is affirmed in the amount of \$2,152.35. The 2004, 2005, 2006, 2007, and 2009 final assessments are voided for the reasons explained in the February 26, 2015 Final Order. Judgment is entered accordingly. The February 26, 2015 Final Order is voided.

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

Entered May 7, 2015.

BILL THOMPSON
Chief Tax Tribunal Judge

bt:dr

cc: Ralph M. Clements, III, Esq.
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