

AMERICAN EQUITY INVESTMENT  
LIFE INSURANCE COMPANY  
500 WESTOWN, STE 440  
WEST DES MOINES, IA 50266,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA  
ALABAMA TAX TRIBUNAL

DOCKET NO. BPT. 15-612

**OPINION AND PRELIMINARY ORDER DENYING  
DEPARTMENT'S MOTION TO DISMISS**

This appeal involves denied business privilege tax refunds requested by the above Taxpayer for the 2010 through 2013 tax years.<sup>1</sup> The Department has filed a motion to dismiss the appeal. It claims that the Tax Tribunal does not have subject matter jurisdiction to hear the appeal because the Taxpayer failed to timely appeal the denied refunds. The motion is denied for the reasons explained below.

The Department audited the Taxpayer's 2008 and 2009 business privilege tax returns and adjusted the net worth apportionment factors reported on the returns, which resulted in additional tax due in both years. The Department entered 2008 and 2009 preliminary assessments against the Taxpayer on March 22, 2010 based on the audit adjustments. The Taxpayer timely petitioned for a review of those preliminary assessments on April 21, 2010, as allowed by Code of Ala. 1975, §40-2A-7(b)(4)a.

The Taxpayer remitted \$275,000 in 2010 business privilege tax to the Department on March 8, 2010. It timely filed its original 2010 business privilege tax return on September 15, 2010. That return reported "net tax due" of negative \$266,018 on line 15.

<sup>1</sup> The Taxpayer also appealed from final assessments of 2012 and 2013 business privilege tax entered against it by the Department. The Department has voided those final assessments.

On line 17, the “[a]mount to be refunded” was \$0. Beside the box on line 17 were the words “Do Not Refund!” A cover letter from the Taxpayer’s Chief Financial Officer submitted with the return read in part – “We request that the overpayment amount on the filed 2010 Business Privilege Tax Return be retained at the Alabama Department of Revenue until the Petition for Review of Preliminary Assessment for the 2008 and 2009 Business Privilege Tax Returns is closed.”

The Taxpayer remitted \$285,000 in 2011 business privilege tax to the Department on March 14, 2011. It timely filed its original 2011 business privilege tax return on September 14, 2011. That return reported “net tax due” of negative \$274,493 on line 15. As with the 2010 return, the line 17 “amount to be refunded” was \$0, and the words “Do Not Refund!” were written beside the line 17 box. A cover letter similar to the 2010 cover letter accompanied the return asking the Department not to refund the amount overpaid until the 2008 and 2009 preliminary assessments were finally resolved.

The Taxpayer remitted \$335,100 in 2012 business privilege tax to the Department on March 13, 2012. It timely filed its original 2012 business privilege tax return on September 13, 2012. That return reported “net tax due” of negative \$326,818 on line 15. As with the 2010 and 2011 returns, the line 17 “amount to be refunded” was \$0, and the words “Do Not Refund!” were again written on the return. A cover letter in substance identical to the 2010 and 2011 cover letters also accompanied the return.

The Department completed its review of the 2008 and 2009 preliminary assessments after the Taxpayer filed its 2010, 2011, and 2012 returns. It subsequently entered 2008 and 2009 final assessments against the Taxpayer on February 13, 2013. The Taxpayer appealed the final assessments to St. Clair County Circuit Court on March

14, 2013.<sup>2</sup>

On March 15, 2013, the Taxpayer filed amended 2010, 2011, and 2012 business privilege tax returns with the Department. The returns reported the same negative net tax due, i.e., overpayments, as shown on the original returns for those years. The amended returns also requested on line 17 for the overpayments to be refunded to the Taxpayer.

The Department did not either grant or deny the refunds claimed on the amended returns within six months. The refunds were accordingly deemed denied on September 15, 2014. The Taxpayer appealed the denied refunds to the Tax Tribunal on March 31, 2015 pursuant to Code of Ala. 1975, §40-2A-7(c)(5)a.

As indicated, the Department has filed a motion to dismiss the Taxpayer's appeal of the denied 2010, 2011, and 2012 refunds based on its claim that the Tribunal lacks subject matter jurisdiction to hear the appeal. Specifically, the Department claims that the Taxpayer's original 2010, 2011, and 2012 returns filed on September 15, 2010, September 15, 2011, and September 15, 2012, respectively, constituted petitions for refund. The Department took no action on the petitions and, according to the Department, those refund claims were deemed denied six months after the returns were filed, or on March 15, 2011, March 15, 2012, and March 15, 2013, respectively. The Department asserts that the Taxpayer was required to appeal those denied refunds within two years pursuant to §40-2A-7(c)(5)a., and that because the Taxpayer did not appeal to the Tribunal until March 31,

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<sup>2</sup> The Circuit Court voided the final assessments, and the Department appealed. The Alabama Court of Civil Appeals unanimously ruled for the Taxpayer on January 16, 2015, see *Ala. Dept. of Revenue v. American Equity Investment Life Insurance Company*, 2015 Ala. Civ. App. LEXIS 16.

2015, or more than two years after the refunds were deemed denied, the appeal was untimely.

The Taxpayer argues that the original returns were not petitions for refund under Alabama law because they did not claim an amount to be refunded. It contends that the amended returns filed on March 15, 2013 were refund petitions, and that it timely appealed the deemed denial of those petitions to the Tax Tribunal.

The Department subsequently also filed a motion to dismiss concerning 2013. The Department indicated in the motion that it issued the Taxpayer a 2013 business privilege tax refund on April 7, 2015 in the amount claimed by the Taxpayer - \$339,846, plus interest of \$13,770.34. It further indicated that the Taxpayer had requested interest of \$20,865.61, but that for various reasons the Tribunal does not have jurisdiction to address the disputed amount of interest that may be due.

The Department's motion to dismiss must be denied because the Taxpayer's original 2010, 2011, and 2012 returns did not constitute petitions for refund under Alabama law.

Code of Ala. 1975, §40-2A-7(c)(1) provides that "[a]ny taxpayer may file a petition for refund with the department for any overpayment of tax. . . ." Code of Ala. 1975, §40-2A-7(c)(2)a. provides generally that "a petition for refund shall be filed" within three years from the date that the return was filed, . . ."<sup>3</sup>

"Petition for refund" is defined at Code of Ala. 1975, §40-2A-3(14), as follows:

Any written request for a refund of any tax previously paid, including in the form of an amended return. Unless otherwise provided by law, the request shall include sufficient information to identify the type and amount of tax

<sup>3</sup> Section 40-2A-7(c)(2)a. also includes a two year statute for filing a refund petition in some instances not relevant in this case.

overpaid, the taxpayer, the period included, and the reasons for the refund.

Applying the plain language of §40-2A-3(14), the Taxpayer's original 2010, 2011, and 2012 returns were not petitions for refund because they did not "request" refunds, as required by the language of the statute. To the contrary, on line 17 of each return, the "amount to be refunded" was \$0, and the words "Do Not Refund!" were plainly written on the returns. The returns identified the amount of tax overpaid in each year, but they clearly did not request the Department to refund those amounts, as required for the returns to qualify as petitions for refund as defined at §40-2A-3(14).

The Taxpayer asserts other arguments in its Response as to why its original returns were not petitions for refunds. Specifically, it claims that the original returns were not "amended" returns, as specified in §40-2A-3(14), and that the original returns did not specify the reasons for the refunds, again as required by §40-2A-3(14). I agree with the Department, however, that a refund can also be claimed on an original return, as evidenced by the fact that the Department issues tens of thousands of income tax refunds a year based on original income tax returns filed by Alabama taxpayers.

The §40-2A-3(14) requirement that a petition must include "the reasons for the refund" is problematic concerning refunds requested on returns because an income tax or business privilege tax return that requests a refund does not specify in words the reason or reasons for the refund. Rather, the "reason" for the claimed refund is that the tax due as computed on the return exceeds the tax previously paid. Consequently, the fact that the Taxpayer's original business privilege tax returns did not state the reason for the refunds did not, in itself, disqualify the returns as petitions for refund. But the fact that the returns were original and not amended returns, and that no separately stated reason for the

refunds was included with the returns, is irrelevant because, as discussed, the returns did not request refunds, and thus were not petitions for refunds as defined at §40-2A-3(14).

The Department argues that the Alabama statute of limitations governing refunds at §40-2A-7(c)(2) is modeled after federal 26 U.S.C. §6511, and that under federal case law a return that “references” an overpayment constitutes a claim for refund, citing *Video Training Source, Inc. v. U.S.*, 991 F.Supp. 1256.

I agree that §40-2A-7(c)(2) is generally modeled after federal §6511 in that it requires that a petition for refund must be filed within three years from when the return was filed or two years from when the tax was paid, whichever is later. The Alabama and federal statutes both also provide that if the return was not timely filed, a petition must be filed within two years from payment of the tax.

The above similarities between the federal and Alabama statutes are not relevant in this case because the time limits within which a petition for refund must be filed is not in dispute in this case. Rather, the disputed issue here is what constitutes a “petition for refund” for Alabama purposes. Alabama has a specific statute, §40-2A-3(14), that defines “petition for refund,” and that statute must control, not a federal statute or federal case law.

The Department relies on the following statement in *Video Training Source* - “When a taxpayer files a tax return with the IRS, the tax return constitutes a ‘claim’ if the return references an overpayment.” *Video Training Source* at 1260. The court went on to hold that the taxpayer’s 1990 income tax return, on which the taxpayer requested a credit or refund for the amount overpaid in that year, constituted a refund claim for the year.

It is unclear what the court in *Video Training Source* meant by the phrase “if the return references an overpayment.” In the actual case, the taxpayer had requested a refund or credit on its return for the year in question. It can thus be argued that a return “references” an overpayment when it requests a refund or credit of the amount overpaid. In any case, *Video Training Source* does not hold that if a return identifies an amount overpaid but does not request a refund of the amount, the return still constitutes a refund claim for federal purposes. And even if the case is so construed, it would not control for Alabama purposes because, as discussed, what constitutes a “petition for refund” for Alabama purposes is controlled by a specific Alabama statute, §40-2A-3(14). That statute requires that to constitute a petition for refund, a return on which an overpayment is identified must also request for the overpayment to be refunded. The Taxpayer’s original 2010, 2011, and 2012 returns did not do so. They were thus not petitions for refund under Alabama law.

I recognize that this case is unusual because in the vast majority of cases where a taxpayer reports an overpayment on a return, the taxpayer also requests for the Department to issue a refund of the amount overpaid. There is, however, nothing in Alabama law that requires a taxpayer to request a refund of tax overpaid for a given tax period.

The Department also concedes at page 6 of its Reply Brief that a taxpayer can file more than one or multiple refund petitions for a given tax period, as long as they are filed within the applicable statute of limitations.

There is nothing prohibiting a taxpayer from filing multiple petitions for refund if they do so within the statutes of limitations. However, these amended returns did not request anything new or different that was not already

requested by the original returns. The Taxpayer points to no authority for this filing to open up a new statute of limitations and I am aware of no such authority.

Consequently, even if the Taxpayer's original returns are treated as petitions for refund, the Taxpayer was not prohibited by Alabama law from also filing and claiming the refunds on amended returns. Contrary to the Department's claim, the filing of the amended 2010, 2011, and 2012 returns in issue did not "open up a new statute of limitations." Rather, the same general three year statute for filing refund petitions at §40-2A-7(c)(2)a. applied, and the Taxpayer timely filed the amended returns, i.e., refund petitions, within that three year statute.

The Taxpayer's amended 2010, 2011, and 2012 returns requested refunds of the amounts overpaid in those years. Those refund petitions were timely filed pursuant to §40-2A-7(c)(2)a. The petitions were deemed denied on September 15, 2013. The Taxpayer timely appealed the denied refunds to the Tax Tribunal on March 30, 2015, or within two years, as required by Code of Ala. 1975, §40-2A-7(c)(5)a. The Tax Tribunal accordingly has jurisdiction to hear the Taxpayer's appeal.

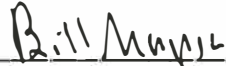
The Taxpayer claims that the refunds in issue should be granted based on the Court of Civil Appeals' holding in *State v. American Equity Investment Life Insurance Company*, *supra*. The Department does not address or otherwise mention that case in its Answer filed in conjunction with its motion to dismiss the Taxpayer's 2013 appeal. I note, however, that the Department paid the 2013 tax refund claimed by the Taxpayer, and that only the interest due for that year is in dispute, which presumably indicates that the Department concedes that the above case controls the substantive issue in dispute for all years.



The Department should file an Amended Answer by July 17, 2015 stating its position on the substantive issue involved in the 2010, 2011, and 2012 refunds in issue. The Taxpayer should also respond by that date concerning its position on the 2013 interest issue. Appropriate action will then be taken.

This Opinion and Preliminary Order is not an appealable Order. The Final Order, when entered, may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2B-2(m).

Entered June 17, 2015.



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BILL THOMPSON  
Chief Tax Tribunal Judge

bt:dr

cc: David E. Avery, III, Esq.  
Bruce P. Ely, Esq.  
James E. Long, Jr., Esq.