

JEFFREY S. KING
2311 W. RAYE STREET
SEATTLE, WA 98199-2312,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
ALABAMA TAX TRIBUNAL

DOCKET NO. INC. 15-288

FINAL ORDER

Jeffrey S. King (“Taxpayer”) appealed to the Tax Tribunal pursuant to Code of Ala. 1975, §40-2A-7(c)(2)a. concerning the Revenue Department’s denial of a 2011 income tax refund. A hearing was conducted on June 30, 2015. The Taxpayer’s CPA, Edward Thomas, attended the hearing. Assistant Counsel Margaret McNeill represented the Department.

The Taxpayer failed to timely file a 2011 Alabama income tax return. The Department received information indicating that the Taxpayer had income in 2011 sufficient to require him to file an Alabama return for that year. It accordingly entered a preliminary assessment against the Taxpayer on July 23, 2014 for the Alabama tax due, plus penalties and interest.

The Taxpayer responded to the preliminary assessment by filing a 2011 Alabama return on August 15, 2014. The Department accepted the return as filed, but disallowed the \$603 refund reported on the return because it was not timely claimed. This appeal followed.

Section 40-2A-7(c)(2)a. provides generally that a refund must be claimed within three years from the date the return was filed, or two years from payment of the tax, whichever is later. If no return was timely filed, as in this case, a taxpayer must claim a

refund within two years from the date of payment of the tax. For purposes of the statute, tax paid through withholding is deemed paid on the original due date of the return.

The Taxpayer paid his 2011 Alabama tax through withholding. The original due date of the 2011 return was April 15, 2012. The Taxpayer had two years from that date, or until April 15, 2014, to claim a refund. As indicated, he did not file his 2011 return and claim the refund until August 15, 2014. Consequently, the refund was properly denied by the Department. See generally, *State v. Pettaway*, 794 So.2d 1153 (Ala. Civ. App. 2001).

The Taxpayer contends that he had three years to claim a 2011 refund based on Code of Ala. 1975, §40-18-1.1 and IRC §6512(b)(3). The Taxpayer's appeal letter reads in part, as follows:

The two-year rule referenced is from Alabama section 40-2A-7(c)(2). This rule is the same as made for Federal purposes in Section 6511(a). We do not dispute that if a return is not filed within two years, then only payments made within two years can be refunded.

However, Alabama Section 40-18-1.1, Operating rules, specifically adopts for state purposes the laws of the United States in order to simplify the preparation of returns, improve enforcement and aid in the interpretation of the state tax laws through increased use of federal judicial and administrative determinations and precedents.

Therefore, Alabama adopts Federal law for tax purposes and the Federal law contains a separate code section (§6512) regarding refund periods after the taxpayer has received a deficiency notice. The flush language of §6512(b)(3) provides that if the deficiency notice is mailed during the third year after the due date and no return had been filed, then the applicable period for refunds shall be 3 years.

We contend that although no return was filed within two years, the period for receiving a refund is increased to three years if the taxpayer is served with a deficiency notice (in this case a Notice of Preliminary Assessment). Since the Alabama Department of Revenue sought a deficiency against the taxpayer, the taxpayer is entitled to a refund of taxes paid within the three year period. Alabama would have not been required to refund the claim if no return was filed but their deficiency filing extended the period for refund as it was later determined that no deficiency existed but in fact the taxpayer

was due a refund.

Section 40-18-1.1(a) reads as follows:

For purposes of this chapter, the statement that gain, loss, income, basis, earnings and profits, or any other item shall be determined in accordance with a specified section or sections of Title 26 United States Code (26 U.S.C.) or a specified federal public law (Pub. L. or P.L.) means that the principles set forth in such specified section or sections and the computations required by such section or sections shall be applied for purposes of this chapter, but shall be applied to the amounts of gain, loss, income, basis, earnings, and profits or other items determined for purposes of this chapter and not to such items for federal income tax purposes.

Contrary to the Taxpayer's claim, Alabama has not adopted in toto the federal income tax code. Rather, it has adopted specific sections of federal law. Section 40-18-1.1 only provides that where Alabama has adopted a specific federal income tax provision, case law and authorities interpreting the federal provision should also be applied for Alabama purposes.

The Alabama statute of limitations for claiming refunds at §40-2A-7(c)(2) is generally modeled after the federal statute at §6511(a). But Alabama has not adopted per se either §6511, or any other federal provision relating to refunds. Specifically, Alabama has not adopted the federal statute relied on by the Taxpayer, §6512(b)(3), nor has it enacted a statute similar to that section. Consequently, the fact that the Department had entered a preliminary assessment against the Taxpayer is of no consequence and does not change the two year statutes in §40-2A-7(c)(2).

The Department's denial of the 2011 refund is affirmed.

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

Entered July 6, 2015.

BILL THOMPSON
Chief Tax Tribunal Judge

bt:dr

cc: Gwendolyn B. Garner, Esq.
Edward L. Thomas, Jr., CPA