

HYSTER-YALE GROUP, INC.
f/k/a NAACO MATERIALS HANDLING
GROUP, INC.
P.O. BOX 2902
PORTLAND, OR 97208,

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STATE OF ALABAMA
ALABAMA TAX TRIBUNAL
DOCKET NO. F. 00-598

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

OPINION AND PRELIMINARY ORDER

This case involves petitions for refund of franchise tax filed by the above Taxpayer for the 1995 through 1999 tax years. Chris Grissom and Will Thistle represented the Taxpayer. Pam Slate represented the Revenue Department.

The Revenue Department concedes that the Taxpayer's 1999 petition was timely filed and timely appealed to the Department's Administrative Law Division ("ALD") (now the Tax Tribunal). This Order addresses whether the Taxpayer's 1995 through 1998 petitions were timely filed and timely appealed. If not, the Tax Tribunal is without jurisdiction to hear the appeals for those years.

Code of Ala. 1975, §40-2A-7(c)(2)a. contains the statute of limitations within which a taxpayer must file a refund petition with the Department, and reads as follows:

Generally. A petition for refund shall be filed with the department or an automatic refund issued pursuant to Section 40-29-71, or a credit allowed, within (i) three years from the date that the return was filed, or (ii) two years from the date of payment of the tax, whichever is later, or, if no return was timely filed, two years from the date of payment of the tax. For purposes of this paragraph, taxes paid through withholding or by estimated payment shall be deemed paid on the original due date of the return.

Code of Ala. 1975, §40-2A-7(c)(5) provides that if a petition is denied, the taxpayer must appeal the denied petition to the Tax Tribunal or to the appropriate circuit court “within two years from the date the petition is denied.”¹

FACTS

The Taxpayer’s 1995 franchise tax return was due on March 15, 1995.

The Taxpayer filed an extension request to file its 1995 return that was date stamped as received by the Department on March 16, 1995. The Taxpayer paid \$65,000 with the request. The Taxpayer’s annual 1995 return was date stamped as received by the Department on September 20, 1995. The Taxpayer paid the remaining tax due of \$122,359 with the return. The envelopes in which the extension request and the annual return were mailed are not in evidence.

The Taxpayer petitioned for a 1995 refund that was date stamped as received by the Department on March 20, 1998. The Department failed to either grant or deny the petition, which was by statute deemed denied six months from when the petition was filed. Code of Ala. 1975, §40-2A-7(c)(3).

The Taxpayer appealed the denied refund to the ALD, which was date stamped as received by the Division on September 20, 2000.

The Taxpayer’s 1996 franchise tax return was due on March 15, 1996.

The Taxpayer filed an extension request to file its 1996 return that was date stamped as received by the Department on April 1, 1996. The Taxpayer paid \$150,000

¹ During the years in issue, a denied refund petition could be appealed to the appropriate circuit court or to the Department’s ALD. The Alabama Legislature statutorily replaced the ALD with the Alabama Tax Tribunal, effective October 1, 2014, pursuant to the Taxpayer Fairness Act, Act 2014-146.

with the request. The Taxpayer's annual 1996 return was postmarked September 16, 1996, and was date stamped as received by the Department on September 20, 1996.

The Taxpayer filed an amended 1996 return that was date stamped as received by the Department on March 7, 1997. It paid \$202,403 with the amended return. It filed a 1996 petition for refund that was date stamped as received by the Department on March 20, 1998. The petition requested a refund of the tax paid with the amended return.

The Department failed to either grant or deny the petition, which was by statute deemed denied six months from when the petition was filed. Section 40-2A-7(c)(3).

The Taxpayer appealed the denied refund to the ALD, which was date stamped as received by the Division on September 20, 2000.

The Taxpayer's 1997 franchise tax return was due on March 15, 1997.

The Taxpayer filed an extension request to file its 1997 return that was postmarked on March 14, 1997. The Taxpayer paid \$220,000 with the request. The Taxpayer's annual 1997 return was postmarked on September 15, 1997.

The Taxpayer petitioned for a refund of the tax paid with the extension request that was date stamped as received by the Department on March 20, 1998.

The Department refunded to the Taxpayer a portion of the requested refund on September 4, 1998. The Taxpayer appealed the partially denied refund to the ALD, which was date stamped as received by the Division on September 20, 2000.

The Taxpayer filed a second 1997 refund petition on September 13, 2000. That petition was deemed denied, and the Taxpayer appealed the denial of the second

petition to the ALD, which was date stamped as received by the Division on March 7, 2003.

The Taxpayer's 1998 franchise tax return was due on March 15, 1998.

The Taxpayer filed an extension request to file its 1998 return that was postmarked on March 12, 1998. The Taxpayer paid \$99,890 with the request. The Taxpayer's annual 1998 return was postmarked on September 15, 1998.

The Taxpayer petitioned for a 1998 refund that was date stamped as received by the Department on September 20, 2000. The Department failed to either grant or deny the petition, which was by statute deemed denied six months from when the petition was filed. Section 40-2A-7(c)(3).

The Taxpayer appealed the deemed denied refund to the ALD, which was date stamped as received by the Division on March 7, 2003.

ANALYSIS

As indicated, §40-2A-7(c)(2)a. provides a specific time limitation within which a taxpayer must file a petition for refund with the Department. If the petition is denied, §40-2A-7(c)(5) allows the taxpayer to appeal either to the Tax Tribunal (previously the ALD) or to the appropriate circuit court within two years from when the petition was denied.

Alabama's appellate courts have consistently held that taxpayers must strictly comply with the procedural aspects of the Uniform Revenue Procedures Act at Code of Ala. 1975, §40-2A-7 et seq., and that if a taxpayer fails to timely file a refund petition with the Department pursuant to §40-2A-7(c)(2)a., or fails to timely appeal a denied

petition to either the Tax Tribunal (previously the ALD) or to the appropriate circuit court pursuant to §40-2A-7(c)(5), the appeal of the denied refund must be dismissed for lack of subject matter jurisdiction. *Lockheed Martin Corp. v. State, Dep't of Revenue*, 210 So.3d 1123 (Ala. Civ. App. 2016); *Rheem Manufacturing Co. v. Alabama Dept. of Revenue*, 33 So.3d 1 (Ala. Civ. App. 2009); *Patterson v. Gladwin Corp.*, 835 So.2d 137 (Ala. 2002).

Concerning the 1995 tax year, the Taxpayer's extension request was date stamped as received by the Department on March 16, 1995. The annual return was date stamped as received by the Department on September 20, 1995. The Taxpayer's 1995 refund petition was date stamped as received by the Department on March 20, 1998, and the Taxpayer appealed the denied petition to the ALD on September 20, 2000. None of the envelopes in which the above documents were mailed to the Department are in evidence.

The Taxpayer argues that the 1995 extension request was timely filed because it was dated March 15, 1995, and was received by the Department on March 16, 1995. If a document mailed to the Department through the U.S. Postal Service is received one day after the document was required to be filed with the Department, arguably the document must have been mailed on or before the due date. But even assuming that the 1995 extension request could be treated as timely, there is no proof that the annual return was filed on or before the September 15, 1995 extended due date because the return was received by the Department on September 20, 1995, and the envelope in which the return was mailed is not in evidence.

Because there is no proof that the Taxpayer's 1995 return was timely filed, §40-2A-7(c)(2)a. required the Taxpayer to petition for a refund within two years from when the 1995 tax was paid in March and September 1995. The Taxpayer filed its 1995 petition on March 20, 1998, or more than two years from when the tax was paid. As indicated, Alabama's appellate courts have held that if a refund petition is not timely filed, the appeal of the denied petition must be dismissed for lack of subject matter jurisdiction. *Lockheed Martin*, supra. The Taxpayer's appeal of the denied 1995 refund is thus due to be dismissed when a Final Order is entered in the case.

Concerning the 1996 tax year, the Taxpayer asserts that the extension request for that year was timely filed because it was dated March 11, 1996, and an EFT worksheet shows that the tax was paid on March 13, 1996. "That Taxpayer's extension request was submitted and payment was made before the filing deadline constitutes substantial circumstantial evidence that Taxpayer timely filed its (1996) extension request." Taxpayer's Response to Department of Revenue's Third Amended and Corrected Response to Request for Procedural and Jurisdictional Arguments, at 6.

The Department contends that the extension request was not received until April 1, 1996, after the due date. It further argues that the "mailbox rule" at Code of Ala. 1975, §40-1-45 controls concerning the receipt of any document required to be filed with the Department by a date certain. It asserts that an extension request, return, or refund petition is timely filed only (1) if it is actually received by the Department on or before the due date, or (2) pursuant to §40-1-45, if the envelope in which the document is mailed

to the Department is postmarked by the U.S. Postal Service on or before the due date.² It asserts that circumstantial evidence other than a Postal Service postmark cannot be used or accepted to prove that a document was timely mailed, citing *Lockheed Martin Corp.*, supra. I agree.

At issue in *Lockheed Martin* was whether the company had timely filed for an extension to file its 1998 franchise tax return. It was undisputed that the Department did not receive the extension request by the March 16, 1998 due date.³ The company submitted a document showing that it had written a check to the Department on March 16, 1998 for the 1998 franchise tax due, and also a copy of the extension request dated March 16, 1998. A senior tax manager for the company testified concerning a 1998 company activity list which showed that his office had delivered the extension request to the company's mailroom on March 15, 1998. There was, however, no evidence showing when the mailroom actually mailed the request, or when the envelope in which the request was mailed was postmarked by the Postal Service.

Lockheed Martin argued that the above facts constituted "other evidence" that

² Department Reg. 810-1-5-.01 currently provides that a postage meter imprint is sufficient to show a timely mailing. The parties disagree as to whether that regulation was in effect during the years in issue. The Court in *Lockheed Martin* held that "[d]uring the relevant periods (1998 and 1999), the Department had not promulgated any regulations authorizing acceptance of articles bearing a postage meter imprint," citing a 1995 ALD case, *Ward v. Ala. Dept. of Revenue*, Docket Inc. 95-396 (Admin. Law Div. 11/7/1995). The Taxpayer contends that the Court's statement in *Lockheed Martin*, and presumably the ALD's holding in *Ward*, are incorrect. That issue is, however, irrelevant and need not be decided for the reasons explained below.

³ The statutory due date was March 15, 1998. Because that date was a Sunday, Lockheed had until the next business date, Monday, March 16, 1998, to file the request. See, Code of Ala. 1975, §40-1-44.

was sufficient to prove that the extension request was timely filed by the March 16, 1998 due date. Lockheed cited several ALD opinions in support of its “other evidence” argument.

The Court held that “[w]e do not believe those (ALD) opinions by the Department’s administrative law judge stand for the proposition asserted by Lockheed, which would appear to be inconsistent with the plain and unambiguous language of §40-1-44. . . .”⁴ *Lockheed Martin*, 210 So.3d at 1129.

The Court did not, however, definitively decide the “other evidence” issue “because the ‘other evidence’ upon which Lockheed relies does not establish that the 1998 franchise tax return was timely filed.” *Lockheed Martin*, 210 So.3d at 1131. Specifically, the Court held that while there was evidence that the extension request reached the company’s mailroom on March 16, 1998, there was “no evidence indicating that the extension request was actually deposited in the United States mail on that date.” *Lockheed Martin*, 210 So.3d at 1130.

Likewise, while the Taxpayer’s 1996 extension request was dated before the due date, and the tax paid by the due date, there is no evidence that the request was deposited with and postmarked by the Postal Service by the due date. Consequently, I must find that because the extension was not timely filed, the due date for the 1996

⁴ I agree that the ALD cases cited, *Schoen v. Dept. of Revenue*, Docket Inc. 11-211 (March 23, 2011); *Zhang v. Dept. of Revenue*, Docket Inc. 10-1044 (1/14/2011); *Dept. of Revenue v. Eli Witt*, Docket Misc. 91-125 (August 6, 1991), did not support Lockheed Martin’s position. I can also find no case decided by the ALD in which the Division specifically held that a taxpayer could prove the timely filing of a refund petition or appeal other than by either actual receipt of the document by the Department on or before the due date, or by a postmark on the envelope in which the document was mailed via the U. S. Postal Service on or before the due date.

return was March 15, 1996. The annual return filed in September 1996 was thus late, in which case the Taxpayer had two years from when the 1996 tax was paid to petition for a refund for that year.

According to the Department, the Taxpayer paid \$150,000 with its 1996 extension request on April 1, 1996, and net tax of \$202,403 was paid with a 1996 amended return on March 7, 1997. See, Department of Revenue's Procedural and Jurisdictional Arguments, at 5. The Department date stamped the Taxpayer's 1996 refund petition as received on March 20, 1998, or within two years from when the Taxpayer paid the 1996 tax on the above dates. Consequently, although the Taxpayer's 1996 annual return was late, the Taxpayer still timely petitioned for a refund of the 1996 tax paid within the two year statute. The Taxpayer's appeal of the denied 1996 refund was also date stamped by the Department on September 20, 2000, within two years from when the petition was deemed denied on September 20, 1998. See again, Department of Revenue's Procedural and Jurisdiction Arguments, at 5. The Tribunal thus has jurisdiction to hear the Taxpayer's appeal of the denied 1996 refund.

Concerning the 1997 tax year, the Taxpayer's extension request for that year was postmarked on March 14, 1997. The annual return was postmarked on September 15, 1997. The Taxpayer petitioned for a 1997 refund that was date stamped as received by the Department on March 20, 1998. The petition requested a refund of the tax paid with the 1997 extension request. The Taxpayer subsequently appealed the deemed denial of that petition to the ALD that was date stamped as received by the Division on September 20, 2000.

The Taxpayer filed a second 1997 refund petition on September 13, 2000. It appealed the deemed denial of that second petition to the ALD on March 7, 2003.

The Department does not specify in its various briefs why it believes that the Taxpayer's 1997 refund petition and subsequent appeal to the ALD were untimely. Rather, it asserts generally that the Taxpayer cannot rely on "other evidence" to prove that the documents were timely filed.

The Department concedes that the 1997 extension request and the 1997 annual return were timely postmarked. See, Department of Revenue's Procedural and Jurisdictional Arguments, at 6. The Taxpayer thus had three years from when the return was filed on September 15, 1997 to petition for a refund. Section 40-2A-7(c)(2)a. The Taxpayer petitioned for a refund of the tax paid with the 1997 extension request on March 20, 1998, clearly within the three year statute. It also timely appealed the denied refund to the ALD on September 20, 2000, within the two year statute from when the petition was deemed denied on September 20, 1998. The Tribunal has jurisdiction to hear the appeal of the Taxpayer's denied first 1997 refund petition.

As indicated, the Taxpayer filed a second 1997 refund petition with the Department on September 13, 2000. That petition was deemed denied on March 13, 2001, and the Taxpayer appealed the deemed denial on March 7, 2003, within the two year statute. The Tribunal thus also has jurisdiction to hear the appeal of the Taxpayer's denied second 1997 refund petition.⁵

⁵ The Department apparently contends that the Taxpayer cannot raise an alternative accounting issue that is the basis of the second 1997 refund petition because it had not previously raised the issue with the Department. That issue will not be addressed now

Concerning the 1998 tax year, the Department concedes that the Taxpayer's extension request and annual return were postmarked by their respective due dates. See again, Department of Revenue's Procedural and Jurisdictional Arguments, at 6. The Taxpayer filed its 1998 refund petition on September 20, 2000, within the three year statute. The Petition was deemed denied on March 20, 2001. The Taxpayer appealed the deemed denied refund on March 7, 2003, clearly within the two year appeal period. The Tribunal thus has jurisdiction to hear the Taxpayer's appeal of the 1998 denied refund petition.

The Tribunal will set the case for a hearing in due course concerning the denied 1996, 1997, 1998, and 1999 refund petitions. As indicated, the Taxpayer's appeal of the denied 1995 refund petition will be dismissed when a Final Order is entered in the case.

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 September 15, 2017.

BILL THOMPSON
Pro Tempore Tax Tribunal Judge

bt:dr

cc: Pamela B. Slate, Esq.
James E. Beck, Esq.
Bruce P. Ely, Esq.
Christopher R. Grissom, Esq.

because this Order only addresses whether the Tribunal has jurisdiction to hear the appeals of the various denied petitions. Whether the Taxpayer improperly raised an issue is a substantive matter that will be addressed and decided later.

