

ALABAMA TAX TRIBUNAL

PROPELLER CORPORATION,	§	
Taxpayer,	§	DOCKET NO. BIT. 18-1099-LP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

FINAL ORDER

This appeal involves the Revenue Department’s denial of business income tax refunds requested by Propeller Corporation on its amended 2015 Form 20C. The Taxpayer filed a Motion for Summary Judgment, and the Revenue Department filed a response. This Final Order is entered based on the motions with no hearing conducted.

FACTS

Propeller Corporation (“Taxpayer”), a holding company, timely filed Alabama Corporation Income Tax Returns Form 20C for tax years 2010 through 2015 and paid the tax due.

The only income reported on the Taxpayer’s Forms 20C for 2010 through 2015 was derived from two entities organized as partnerships: CTP Holdings LLC (“CTP”) and Pilot Travel Centers LLC (“PTC”).

CTP and PTC filed Alabama Partnership/Limited Liability Company Returns of Income Form 65 for 2010 and 2011, among others. In connection with these composite returns, both CTP and PTC paid Alabama income tax on the distributive shares of income paid to their nonresident members, including the Taxpayer.

The Taxpayer did not claim a Form 20C credit for the \$113 income tax payment made on its

behalf by CTP in 2010 nor for the \$76,041 income tax payment made on its behalf by PTC in 2011. Shortly after filing its 2015 Form 20C, the Taxpayer discovered that it had not used these credits totaling \$76,154 (“Composite Tax Payments”) and had not previously reported them on its Form 20C returns as originally filed for 2010 through 2015.

Upon discovering the unused composite tax credits, the Taxpayer contacted the Revenue Department on October 10, 2016, to determine the appropriate method to request a refund. The Revenue Department verbally advised the Taxpayer to file amended returns for tax years 2010 through 2015 to report and carryforward the unclaimed Composite Tax Payments to 2015 and, on the amended Form 20C for 2015, request a refund of the overpayment in the amount of \$76,154.

On December 27, 2016, the Taxpayer filed amended Forms 20C for 2010 through 2015 with the Revenue Department. The amended Forms 20C did not report any changes to the Taxpayer’s income, apportionment, or tax liability. The amended Forms 20C only carried forward the unused composite tax credits to 2015 and requested a refund of the overpayment on the 2015 Form 20C.

The Revenue Department denied the Taxpayer’s petition for a refund on the basis that the statute of limitations had expired for 2010 and 2011.

ISSUE

At issue is whether the Taxpayer can apply the Composite Tax Payments, generated from transactions that took place in years that are otherwise closed under the statute of limitations, on its amended 2015 tax return.

LAW and ANALYSIS

Section 40-2A-7(c)(2)a. provides generally that

“[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 the return was filed, or (ii) two years from 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.”

The statute continues in subsection (b) to provide that the limitation for filing a petition for refund in the case of a net operating loss carryback shall follow 26 U.S.C. Section 6511(d)(2). As we are not presented with an NOL carryback, and we know that the Taxpayer timely filed its returns for 2010 and 2011, we look to subsection (a) for initial guidance. Notably, that subsection provides that the *allowance of a credit* is subject to the limitations prescribed therein.

The Taxpayer contends that the Composite Tax Payments should be treated similarly to the NOLs and follow federal guidelines as in *Renasant Bank v. State of Alabama Dep’t of Rev.*, BIT 14-1053; BIT 15-462 (Ala. Tax Trib. June 4, 2015), and thus they should not expire within the statute of limitations for refunds.

While the Taxpayer is correct that Alabama corporate income tax generally conforms to federal income tax accounting methods, the Legislature enacted specific operating rules concerning when federal law shall be employed in determining Alabama corporate income tax:

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...or a specified federal public law...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.”

Ala. Code 40-18-1.1(a). A petition for a refund or allowance of a credit is governed by an Alabama statute with no reference to a federal law. The Tribunal has previously addressed this issue: “[t]here

is no provision in the IRC comparable to or corresponding with Alabama's §40-18-24.2(b)(1) composite return requirement. Rather, it is an Alabama-specific statute separate and apart from federal law, and [it] must be construed accordingly." *Tanner & Guin v. State of Alabama Dep't of Revenue*, Docket No. BIT. 14-502 (Ala. Tax Trib. 2015).

The Revenue Department argues that Composite Tax Payments are a form of income tax withholding, not tax credits or net operating losses ("NOLs"). I agree. "The Department is correct that the composite return provision is in the nature of a withholding provision whereby the entity is required to pay tax on the income paid to a nonresident partner/member." *Id.*

The Taxpayer argues that *Stephens v. State of Alabama Department of Revenue*, No. INC. 96-127 (Ala. Admin. Law Div. April 12, 1996), applies here to establish that "credits from overpayment of tax may be carried forward if they were not applied to estimated tax payments and subject to the limitation on estimated payments." However, the facts in *Stephens* do not align in such a way to draw the Taxpayer's desired conclusion here. In *Stephens*, the taxpayer filed its 1992 return in 1995, claiming an overpayment that stemmed from income withheld during 1992 and income withheld in and claimed as "carryforward" credit on the returns for 1988, 1989, and 1990. The Administrative Law Division ruled that the tax withheld during 1992 was out of statute for a refund because it was deemed paid on the due date of the return. However, the carryforward credit was not out of statute because that carryforward credit was not deemed paid on the original due date of the return but was technically "paid" when the return was filed and the credit claimed. Thus, in comparing the case at issue to *Stephens*, the composite payments correspond to the 1992 withholding, deemed paid on the due date of the returns. No credit was claimed within the statute of limitations that could be carried forward to 2015. Thus, the claim for refund of the Composite Tax Payments on the 2015 return was

out of statute.

The refund was properly denied by the Department.

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

Entered December 27, 2019.

/s/ Leslie H. Pitman
LESLIE H. PITMAN
Associate Tax Tribunal Judge

lhp:dr

cc: Stephen G. Imp
Craig A. Banks, Esq.