ALABAMA TAX TRIBUNAL

SSAB ALABAMA, INC.,	§	
	§	
Taxpayer,	§	DOCKET NO. S. 19-1182-JP
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

OPINION AND PRELIMINARY ORDER REGARDING THE DOCTRINES OF RES JUDICATA AND COLLATERAL ESTOPPEL

SSAB Alabama, Inc. (the Taxpayer), filed petitions with the Alabama Department of Revenue requesting refunds of utility tax that had been paid "for electricity used in an electrothermal manufacturing process and natural gas used to chemically convert a raw material prior to an electrothermal manufacturing operation." The refund petitions were denied, and the Taxpayer appealed those denials to the Alabama Tax Tribunal.

The Taxpayer asserted in its Notice of Appeal that its refund claims "were for the same uses of electricity and natural gas and were determined with data from the same meters as the refund claims that were the subject of the Final Order of the Mobile County Circuit Court in CV-2018-900167 issued May 31, 2018 …" Thus, the Taxpayer argued that the doctrines of res judicata and collateral estoppel apply in this Tax Tribunal appeal so as to reverse the Revenue Department's denials of the refund petitions.

Oral argument was scheduled concerning the Taxpayer's assertion of these doctrines and the parties submitted pre-argument briefs. Following oral argument on March 18, 2021, the parties submitted supplemental briefs. In its briefs, the Taxpayer focused on the doctrine of collateral estoppel.

Res Judicata

"'The essential elements of res judicata are (1) a prior judgment on the merits, (2) rendered by a court of competent jurisdiction, (3) with substantial identity of the parties, and (4) with the same cause of action presented in both actions.' Equity Res. Mgmt., Inc. v. Vinson, 723 So. 2d 634, 636 (Ala. 1998)." *Dupree v. PeoplesSouth Bank*, 308 So.3d 484, 489 (Ala. 2020).

The Court of Civil Appeals of Alabama succinctly addressed the fourth element of the doctrine of res judicata as it pertains to tax cases:

> For the doctrine of res judicata to apply, the same cause of action must be involved in both lawsuits. Our supreme court discussed this premise in State v. Plantation Pipe Line Co., 265 Ala. 69, 89 So.2d 549 (1956), a case involving franchise taxes in different years. The court quoted with approval the following applicable principles from Annotation, "Judgment in Tax Cases in Respect of One Period as Res Judicata in Respect to Another Period," 150 A.L.R. 5 (1943):
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> " 'Generally, where in a proceeding concerning a tax for a particular period a judgment is rendered which determines that the taxpayer or his property is taxable or is exempt from taxation, but is not supported by a finding or findings specifying the grounds or facts upon which the conclusion is reached, such judgment has been held not to settle conclusively the question that the taxpayer or his property is taxable, or exempt from taxation, for a different period not involved in the former proceeding. This observation is borne out by nearly all the cases, irrespective of the theory upon which the result is reached under the particular circumstances of an individual case.' 150 A.L.R. at page 63.
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> " 'The general rule that "a judgment on one cause of action is not conclusive in a subsequent action based upon a different cause of action as to questions of fact which might have been but were not litigated and determined in the prior action" (see Am.Law.Inst. Restatement, Judgments § 68, Comment d), has been applied where taxes for different periods were involved in successive proceedings.' 150 A.L.R. at page 32."
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> 265 Ala. at 91, 89 So.2d at 568-69 (emphasis added).
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> According to federal tax law, the matter is well settled. In Keokuk & W. R.R. v. Missouri, 152 U.S. 301, 14 S.Ct. 592, 38 L.Ed. 450 (1894), the Supreme Court

> said: "A suit for taxes for one year is no bar to a suit for taxes for another year. The two suits are for distinct and separate causes of action." 152 U.S. at 314, 14 S.Ct. at 597. The United States District Court for the Northern District of Alabama discussed the issue as follows:
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> "[I]t seems too clear to require the citation of authorities that plaintiff's reliance upon the judgment of dismissal entered in Civil Action 7641, wherein he asserted a claim for refund of taxes paid for the year 1949 as res judicata of his claims for recovery of taxes for the years 1955 through 1958 is misplaced. It is axiomatic in tax law that there is a separate cause of action for each tax year." *Fuqua v. Patterson*, 193 F.Supp. 313, 315 (N.D.Ala.), aff'd, 295 F.2d 509 (5th Cir.1961). See also *United States v. Stone & Downer Co*., 274 U.S. 225, 47 S.Ct. 616, 71 L.Ed. 1013 (1927), Annot., "Judgment in Tax Cases as Res Judicata," 274 U.S. 225, 47 S.Ct. 616, 71 L.Ed. 1013 (1928).

State v. Delaney's, Inc., 668 So.2d 768, 771-72 (Ala. Civ. App. 1995).

Here, it is undisputed that the tax periods under appeal differ from the periods that were at issue in the Mobile Circuit Court action. Therefore, the doctrine of res judicata is inapplicable.

Collateral Estoppel

The doctrine of collateral estoppel acts "[a]s a bar to relitigating an issue which has already been tried between the same parties or their privies …" *Black's Law Dictionary*, 5th Edition. For the doctrine to apply, four elements are required:

(1) that an issue in a prior action was identical to the issue litigated in the present action;
(2) that the issue was actually litigated in the prior action;
(3) that resolution of the issue was necessary to the prior judgment; and
(4) that the same parties are involved in the two actions.

Malfatti v. Bank of America, N.A., et al., 99 So.3d 1221, 1225 (Ala. 2012), quoting *Walker v. City of Huntsville*, 62 So.3d 474, 487 (Ala. 2010).

As quoted, the issue in a subsequent action in which a party attempts to invoke collateral estoppel must have been "actually litigated" in the prior action. *Malfatti* at 1225.

However, "'[i]n the case of a judgment entered by confession, consent, or default, none of the issues is actually litigated.'" *Id*. at 1226 (quoting *Restatement (Second) of Judgments* § 27 cmt. e (1982)).

Here, the Taxpayer argues that the Revenue Department is estopped from denying the Taxpayer's refund petitions because of a Mobile Circuit Court judgment in a separate action involving the parties and, thus, that the Tax Tribunal should grant the petitions without a trial. However, the issues that currently are before the Tax Tribunal were not "actually litigated" before the Mobile Circuit Court. In that prior action (CV-2018-900167.00), the circuit court entered the following Final Order on May 31, 2018:

> This matter comes before the Court on the parties' Joint Motion for Dismissal with prejudice of this case.
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> The Court finds that there are no material, disputed issues of fact or law remaining between the parties, and therefore ORDERS, ADJUDGES, and DECREES as follows:
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> 1. The Department filed a Notice of Appeal and Complaint for Trial de Novo, in the above-captioned cause, on January 18, 2018 (the "Complaint").
> 2. After reviewing the records supplied to the Department by the Defendant/Appellee, the Department is satisfied that the refunds that were the subject of the proceeding below, before the Alabama Tax Tribunal, are in fact proper and due to be paid.
> 3. Therefore, further proceedings before this Honorable Court are moot, unnecessary, and would be a waste of judicial resources, as there are no material disputed issues of fact.
> 4. The Court further finds that the refund petitions filed by SSAB Alabama, Inc. (the "Taxpayer") with the State of Alabama, Department of Revenue (the "Department") which were the subject of the proceeding below before the Alabama Tax Tribunal … are correct and are due to be granted. …

Obviously, the issues raised in circuit court were not litigated by the parties. On the contrary, the issues were *resolved* by the parties; *i.e*., consented to by the Revenue Department so as to warrant a dismissal of the case. (In its Brief Concerning Collateral

Estoppel filed with the Tax Tribunal in the present appeal, the Taxpayer stated on page 3 that "[i]t is important to note that this Final Order [of the circuit court] was entered with the consent of the Department. In fact, the Department assisted in the drafting of this order.") Such a resolution that made further proceedings in circuit court "moot, unnecessary, and … a waste of judicial resources" was not the product of actual litigation. Instead, it was, in essence, a consent judgment, which is defined by *Black's Law Dictionary*, 5th Edition, as "[a] judgment, the provisions and terms of which are settled and agreed to by the parties to the action." But, as noted, no issues are actually litigated in a case in which a consent judgment is entered. *Malfatti*, *supra*, at 1226.

Therefore, the doctrine of collateral estoppel is inapplicable because the doctrine's second element is not present.

The Taxpayer's appeal will proceed. It is so ordered.

Entered September 8, 2021.

/s/ *Jeff Patterson*
JEFF PATTERSON
Chief Judge
Alabama Tax Tribunal

cc: Whitney Compton, Esq.
Donald G. Beebe, Esq.
David E. Avery, III, Esq.