

ALABAMA TAX TRIBUNAL

KNAUF INSULATION, INC. §
 Taxpayer, §
 DOCKET NO. COUNTY 21-122-LP
v. §
CHAMBERS COUNTY. §

OPINION & PRELIMINARY ORDER

Introduction

This appeal involves a partially denied refund of consumer use tax for the periods July 1, 2015, through June 30, 2018, by Chambers County (“the County”) against the Taxpayer. Avenu Insights & Analytics (“Avenu”), as agent and designee for the County, filed the County’s Answer to Denied Refund Appeal & Motion to Dismiss (“Answer & Motion to Dismiss”), in which it requested that the Tax Tribunal dismiss the Taxpayer’s appeal “with prejudice for lack of subject matter jurisdiction pursuant (sic) and the Taxpayer’s failure to state a claim upon which relief can be granted as the claim is time-barred.” The Taxpayer filed a reply to the County’s Answer & Motion to Dismiss, and a copy of the Taxpayer’s reply is attached to the County’s copy of this Opinion & Preliminary Order.

Facts and Procedural History

Avenu conducted an audit of the Taxpayer, which included the periods July 1, 2015, through June 30, 2018 (“the audit period”).¹ The Taxpayer and Avenu executed

¹The date that Avenu commenced its audit of the Taxpayer is unclear from the record in this case. However, the date that the audit was commenced is of no consequence in resolving the issues

multiple “Agreement Extending Statute of Limitations for Assessment or Refund” forms (“extension agreements”) relevant to the audit period. The first extension agreement was executed on August 20, 2018, and the last extension agreement, executed on October 31, 2019, provided for an expiration date of April 30, 2020.

In its Notice of Appeal, the Taxpayer stated that it submitted a direct refund petition, totaling \$138,638.72 for the periods July 1, 2015, through June 30, 2018, to Avenu on November 14, 2019. Avenu issued its audit report on October 8, 2020, and, according to the Taxpayer, Avenu granted the Taxpayer a refund in the amount of \$80,178.75, for the periods November 1, 2016, through June 30, 2018, and denied a refund in the amount of \$58,459.97, for the periods July 1, 2015, through October 31, 2016. Avenu, in the audit report issued to the Taxpayer, stated the following regarding the refund denial:

Although the Taxpayer requested a refund going back to July 2015, this has been disallowed. The refund period can only go back 3 years from the time the refund petition was filed. The refund petitions were filed in November 2019. Therefore, the refund period will begin 11/1/2016 and go through 9/30/2019, which was the last month the liquid oxygen purchases were incorrectly accrued. The current audit period is 9/1/2017 – 8/30/2020.

The Taxpayer appealed the partial refund denial to the Tax Tribunal on October 4, 2021.

Law and Analysis

A. Subject Matter Jurisdiction

The basis of the County’s Motion to Dismiss seems to be a cursory statement

presented in the County’s Motion to Dismiss.

regarding the Tax Tribunal's lack of subject matter jurisdiction in this case. The County, in its Answer & Motion to Dismiss, cited Ala. Code § 40-2B-2(g)(2)a., but provided no additional argument or analysis regarding the Tax Tribunal's subject matter jurisdiction in this case (i.e., an appeal of a partially denied refund). Generally, Ala. Code § 40-2B-2(g)(2)a. provides that the Alabama Tax Tribunal has jurisdiction over appeals of final assessments or denied refunds of county and municipal sales, use, rental, and lodgings taxes, and that a taxpayer may appeal a final assessment or denied refund to the Tax Tribunal in accordance with the provisions of Ala. Code § 40-2A-7.

Regarding the denial, or partial denial, of a petition for refund, Ala. Code § 40-2A-7(c)(5) provides, in pertinent part,

a. A taxpayer may appeal from the denial in whole or in part of a petition for refund by filing a notice of appeal with the Alabama Tax Tribunal within two years from the date the petition is denied, and the appeal, if timely filed, shall proceed as hereinafter provided for appeals to the Alabama Tax Tribunal.

...

c. If an appeal is not filed with the Alabama Tax Tribunal or the circuit court within two years of the date the petition is denied, then the appeal shall be dismissed for lack of jurisdiction.

As noted, the Taxpayer's refund petition was denied by Avenu on October 8, 2020. In accordance with Ala. Code § 40-2A-7(c)(5), the Taxpayer had two years from that date, or until October 8, 2022, to timely file its Notice of Appeal with the Alabama Tax Tribunal. The Taxpayer's Notice of Appeal was filed on October 4, 2021, thus timely filed. Therefore, the County's Motion to Dismiss for lack of subject matter jurisdiction

is denied.

B. Time Limitation for Filing Petition for Refund

The following statutory provisions are relevant to the timeliness of the Taxpayer's refund petition.

Generally. A petition for refund shall be filed with the department [here, the County²] 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.

Ala. Code § 40-2A-7(c)(2)a.

* * *

The department [here, the County³] and the taxpayer may, prior to the expiration of the period for entering a preliminary assessment or the filing of a petition for refund, agree in writing to extend the time provided for entering the assessment or filing the petition in this chapter. The tax may be assessed, or the petition for refund may be filed, at any time prior to the expiration of the period agreed upon. The period agreed upon may be extended by subsequent agreements in writing made before the expiration of the period previously agreed upon.

Ala. Code § 40-2A-7(b)(2)i.

The Taxpayer's July 2015 consumer use tax return was due on August 20, 2015.

² "... For purposes of any appeal filed by a taxpayer pursuant to this section, the term 'department' as used in Section 40-2A-7 means the governing body of the applicable self-administered county or municipality and not the Department of Revenue, and the term 'secretary' as used in Section 40-2A-7 means the clerk of the governing body of the applicable self-administered county or municipality." Ala. Code § 40-2B-2(g)(2)a.

³ *Id.*

See Ala. Code § 40-23-7. The County, in its Answer, stated that the Taxpayer’s “July 2015 return was filed on August 19, 2015.” The County argues that the refund petition limitations period at Ala. Code § 40-2A-7(c)(2)a., and the timeliness of any agreement to extend the limitations period in accordance with Ala. Code § 40-2A-7(b)(2)i., must each be measured from the date the return was filed. The Taxpayer argues that the original due date of the return is used to measure compliance with Ala. Code §§ 40-2A-7(c)(2)a. and 40-2A-7(b)(2)i. The Taxpayer is correct.

“[T]he Alabama refund statute [Ala. Code § 40-2A-7(c)(2)a.] was modeled after its federal counterpart [26 U.S.C. § 6511(a)].” *HealthSouth Corp. et. Al. v. Alabama Dept. of Rev.*, Docket No. BIT. 08-1021 at 15-16 (ALD 7/16/2009). The Internal Revenue Code (“IRC”) at §§ 6513(b)(1) and (2) “specif[ies] when [a] return is deemed to be filed and when taxes are paid.” *State v. Pettaway*, 794 So.2d 1153, 1156 (Ala. Civ. App. 2001). Further, IRC § 6513(a) provides that, “[f]or purposes of section 6511, any return filed before the last day prescribed for the filing thereof shall be considered as filed on such last day.”

The Alabama Department of Revenue has taken the same approach in its promulgation of Ala. Admin. Code r. 810-14-1-.19(2), which states that a “return shall be considered as filed on the original due date if the tax is paid or the return was actually filed before the original due date.” Ala. Code § 11-3-11.2(b), as codified from Section 3 of The Local Tax Simplification Act (“the LTSA”), Act No. 98-192, states, in pertinent part, “Any rules and regulations adopted or utilized by [a] county or its designee shall be consistent with the rules and regulations adopted through the

provisions of the Alabama Administrative Procedure Act by the Department of Revenue for the corresponding state tax.” Here, the County has not cited any rule or regulation that it has adopted or utilized to support its denial of the Taxpayer’s petition on the grounds that the petition was filed one day before the return was due. Further, any such rule or regulation, even if adopted or utilized by the County, would be inconsistent with the Revenue Department’s rule and, thus, violative of the LTSA. Therefore, the Taxpayer’s July 2015 consumer use tax return is considered as filed on the original due date of August 20, 2015.

The Taxpayer, in its Notice of Appeal, argued that the extension agreements it executed with Avenu extended the statutory period in which it had to submit its refund petition for the periods covered by the extension agreements. The County, in its Answer & Motion to Dismiss, argued that the first agreement was executed after the statutory period in which the Taxpayer was required to claim a refund for periods July 1, 2015, through October 31, 2016, and, as a result, the first extension agreement and all subsequent extension agreements were unenforceable as to those periods.

As noted, the Taxpayer and Avenu executed multiple extension agreements relevant to the audit period. The first extension agreement was executed on August 20, 2018, and the last extension agreement, executed on October 31, 2019, provided for an expiration date of April 30, 2020. Consistent with the reasoning set out above, the first extension agreement, which was executed 3 years after on the original due date of the Taxpayer’s July 2015 return, was timely and enforceable pursuant to Ala. Code § 40-2A-7(b)(2)i. The subsequent extension agreements, each of which was executed by the

parties prior to expiration of the preceding extension agreement, were also timely and enforceable. As such, the Taxpayer had until April 30, 2020 (i.e., the expiration date of the last executed extension agreement) to submit its petition for refund. As noted, the refund petition was submitted on November 14, 2019⁴, thus timely. Therefore, the County's Motion to Dismiss for "the Taxpayer's failure to state a claim upon which relief can be granted as the claim is time-barred" is denied.

Conclusion

The County's Motion to Dismiss for lack of subject matter jurisdiction is denied. The County's Motion to Dismiss for the Taxpayer's failure to state a claim upon which relief can be granted, as the claim is time-barred, is denied. This appeal will proceed. The County is directed to notify the Tax Tribunal, no later than **September 26, 2022**, of its position regarding the Taxpayer's refund petition for the periods July 1, 2015, through October 31, 2016.

It is so ordered.

Entered August 25, 2022.

/s/ Leslie H. Pitman

LESLIE H. PITMAN

Associate Judge

Alabama Tax Tribunal

lhp:maj

cc: Marc Caito
Michael Portis (w/ enc.)
Leslie Payne (w/ enc.)
Kendrick E. Webb, Esq. (w/ enc.)
J. Mark Cowell, Esq. (w/ enc.)

⁴The Taxpayer, in its Notice of Appeal, stated that the refund petition was filed on or around November 29, 2019. The analysis of the application of Ala. Code § 40-2A-7(b)(2)i. is the same using either date.