

SOUTHERN COMPANY SERVICES, INC.	§	STATE OF ALABAMA
BIN 10139		DEPARTMENT OF REVENUE
241 Ralph McGill Blvd., NE	§	ADMINISTRATIVE LAW DIVISION
Atlanta, GA 30308-3328,		
	§	
Taxpayer,		DOCKET NO. CORP. 03-355
	§	
v.		
	§	
STATE OF ALABAMA		
DEPARTMENT OF REVENUE.	§	

**FINAL ORDER**

This case involves final assessments of corporate income tax entered against Southern Company Services, Inc. (“Taxpayer”) for 1990 – 1993 and 1998. A hearing was conducted on March 4, 2004. An Opinion and Preliminary Order was entered on August 12, 2004. That Order addressed four issues: (1) was the Taxpayer required to use the same accounting method for Alabama reporting purposes during the subject years that it used for federal purposes; (2) was the Department barred by laches from assessing the Taxpayer; (3) if the Taxpayer was required to change accounting methods, should it be allowed adjustments in the year of change to prevent the double counting and/or omission of items of income and expense; and (4) should interest be abated because of undue delay by the Department.

Concerning Issue (2), the Administrative Law Division held that laches did not apply. See, Opinion and Preliminary Order at 5, 6. Concerning Issue (4), the Department’s Taxpayer Advocate determined that the 1990 – 1993 final assessment was unduly delayed, and that seven years interest relating to that assessment should be abated.

Concerning Issue (1), the Administrative Law Division held that Code of Ala. 1975, §40-18-13(a), as amended in 1990, required the Taxpayer to compute its Alabama income

tax liability using the same accounting method that it used for federal purposes. See, Opinion and Preliminary Order at 3 – 5.<sup>1</sup> Finally, the Administrative Law Division held that certain transitional adjustments should be made to properly implement the change in accounting methods. See, Opinion and Preliminary Order at 7, 8.

The Taxpayer was directed to compute the transitional changes and submit them to the Department for response. The Taxpayer submitted the computations, and also met with Department representatives concerning the computations on several occasions. The Department responded in July 2005 that the Taxpayer is not entitled to any transitional adjustments, and that the final assessments, less the abated interest, should be affirmed. See, July 25, 2005 Response of Alabama Department of Revenue to Opinion and Preliminary Order. The Taxpayer replied that Alabama law and Dept. Reg. 810-3-13-.04 allow the transitional adjustments. See, August 30, 2005 Reply Brief of Taxpayer.

This is a difficult case. The Taxpayer used the book method of accounting in filing its Alabama income tax returns from 1949 through 1989. In 1990, the Alabama Legislature amended Code of Ala. 1975, §40-18-13 to require taxpayers to compute income by the same accounting method used for federal income tax purposes. The change was effective for 1990 and subsequent periods. Despite the change, however, the Taxpayer continued to use the book method in filing its 1990 through 1998 Alabama returns.

The Department audited the Taxpayer's 1990 through 1993 returns and required the Taxpayer to report using its federal accounting method in those years. The Department

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<sup>1</sup> As discussed in the Opinion and Preliminary Order at 2, the Taxpayer had used the book method of accounting in computing its Alabama liabilities from 1949 through 1998.

entered preliminary assessments for the additional tax due in February 1995. The Taxpayer timely petitioned for a review of the 1990 – 1993 preliminary assessments. The Department subsequently issued a revised audit report in February 2001, and thereafter entered a final assessment in April 2003.

While the 1990 through 1993 assessments were still pending, the Department audited the Taxpayer's 1994 through 1996 Alabama returns. As indicated, those returns were also computed using the book method of accounting. The Department notified the Taxpayer in November 1998 that the 1994 through 1996 returns had been accepted as filed.

The Department later reviewed the Taxpayer's 1998 return, disallowed the Taxpayer's use of the book method, and consequently assessed the Taxpayer for additional tax due in October 2003.

As discussed, the Opinion and Preliminary Order held that §40-18-13, as amended in 1990, required the Taxpayer to file its Alabama returns using the same accounting method it used for federal purposes. The Order also held that the Taxpayer should be allowed certain transitional adjustments in the year of change to properly implement the change, citing Reg. 810-3-13-.04. That regulation states in pertinent part that "any increase or decrease in income resulting from a change in accounting method must be taken into account in full in the year of change."

In making its transitional adjustments, the Taxpayer employed 26 U.S.C. §481. The Department argues that Alabama has not adopted IRC §481. I agree. However, Reg. 810-3-13-.04 clearly allows a taxpayer to make transitional adjustments in the year of change to reflect the change in accounting methods.

The Department also argues that the Taxpayer is prohibited from making the transitional changes because it failed to request permission from the Department to make the accounting change, as specified in Reg. 810-3-13-.04(1). However, that requirement applies only if a taxpayer is affirmatively seeking to change its method of accounting. In this case, the Taxpayer's change of accounting method was required by law, and was not optional with the Taxpayer. Consequently, prior permission was not required.

The Department concedes that 1990 was not timely assessed. The year of change was thus 1991. The transitional adjustments required to reflect the Taxpayer's change in accounting methods clearly reduces the Taxpayer's Alabama taxable income in that year to zero. However, Reg. 810-3-13-.04 does not allow the transitional changes to be carried forward beyond 1991. Consequently, the additional tax due as assessed for 1992, 1993, and 1998 is due to be affirmed.

The additional tax due for 1992 and 1993 is \$45,193 and \$41,262, respectively. See, Dept. Ex. D. Interest would normally be due on those amounts from the due date of the tax, or March 15 of the subsequent years. Code of Ala. 1975, §40-1-44. As indicated, however, the Department's Taxpayer Advocate has determined that the Department unduly delayed the 1990 – 1993 assessment for seven years, and that interest for that period should be waived. Code of Ala. 1975, §40-2A-4(b)(1)c. Consequently, interest should not begin to accrue on the liabilities until March 15, 2000, concerning the 1992 liability, and March 15, 2001 concerning the 1993 liability. Under the unusual circumstances of the case, the penalties assessed by the Department are also waived for reasonable cause. Code of Ala. 1975, §40-2A-11(h).

The 1990 – 1993 final assessment is reduced to 1992 and 1993 tax of \$86,455, plus applicable interest as indicated above. The 1998 final assessment, less the penalty, is affirmed in the amount of \$15,224, plus interest from the date the final assessment was entered, October 7, 2003. Judgment is entered in the above amounts.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered February 23, 2006.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

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