

HOME DEPOT USA, INC.  
ATTN: LYNN MONTSALVATGE  
2455 PACES FERRY ROAD, NW  
ATLANTA, GA 30339-4024,

§ STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. S. 06-1079

§

v.

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

§

**PRELIMINARY ORDER GRANTING TAXPAYER'S  
APPLICATION FOR REHEARING**

This appeal involves a denied petition for refund of State sales tax filed by the above Taxpayer for the period September 2000 through July 2003. The Taxpayer appealed to the Administrative Law Division in September 2006. The Department moved for the appeal to be dismissed because the Taxpayer failed to appeal within two years from when the petition was denied, as required by Code of Ala. 1975, §40-2A-7(c)(5)a. The Administrative Law Division granted the motion, and a Final Order Dismissing Appeal was entered on November 13, 2006. The Taxpayer timely applied for a rehearing. The rehearing is granted for the reasons explained below.

The Taxpayer filed its refund petition on October 20, 2003. The Department failed to either grant or deny the petition within six months. The petition was consequently deemed denied by operation of law at that time, or on April 20, 2004. See, Code of Ala. 1975, §40-2A-7(c)(3). As indicated, the Taxpayer appealed to the Administrative Law Division in September 2006.

The Administrative Law Division initially granted the Department's motion to dismiss for lack of jurisdiction because the Taxpayer failed to appeal within two years from when the Taxpayer's petition was deemed denied. The Taxpayer contends on rehearing,

however, that the appeal should not be dismissed because it received an October 18, 2004 letter from the Department that stated that the refund was being denied, and that the Taxpayer had two years from that date to appeal. The letter specified that “[i]f you wish to pursue this matter further, you may request a formal hearing before an Administrative Law Judge within two years from the date you receive this letter. . . .” The Taxpayer claims that it relied in good faith on that information, and that its appeal filed within two years of the October 18, 2004 letter should be accepted as timely.

The Department does not dispute that the October 18, 2004 letter notified the Taxpayer that it had two years from that date to appeal. It contends, however, that the letter was a nullity, and could not extend or waive the two year statute of limitations for appealing. It also argues that it cannot be estopped from asserting the statutory time limit as a bar to the Taxpayer’s refund claim. I disagree.

Alabama’s Supreme Court has consistently held that the Revenue Department cannot be estopped from assessing and collecting a tax that is legally due. *Community Action Agency of Huntsville, Madison County, Inc. v. State*, 406 So.2d 890 (Ala. 1981); *State v. Maddox Tractor & Equipment Co.*, 69 So.2d 426 (1953). The Court has also held, however, that the State may be estopped from asserting that a taxpayer failed to timely appeal “where the untimeliness of the filing of their appeal was caused by misinformation furnished by the State’s officer and relied upon by the petitioners to their detriment.” *Ex parte Four Seasons, Ltd.*, 450 So.2d 110, 112 (Ala. 1984). The rationale of *Ex parte Four Seasons* applies in this case.

In *Ex parte Four Seasons*, the county tax assessor notified the petitioners that the county board of equalization had ruled on their protest on October 20, 1982. The

petitioners were required by statute to appeal that decision to circuit court within 30 days. They appealed on November 18, within 30 days from October 20.

The State moved for summary judgment because the board had actually denied the petitioners' protest on or before October 4, 1982. Consequently, the petitioners had failed to appeal within 30 days from when the protest had actually been denied. The trial court and the Court of Civil Appeals held that the appeal must be dismissed as untimely.

The Supreme Court reversed. "In the case before us, the secretary's active misrepresentation of the date of the board's decision is being used in an attempt to deny the taxpayers, who relied on it, their right to an appeal to a court of law. Such a result would obviously work a serious injustice. Further more, the public's interest would not be unduly damaged by the imposition of estoppel in this case." *Ex parte Four Seasons*, 450 So.2d at 112.

The Supreme Court subsequently applied its rationale in *Ex parte Four Seasons* in *Talladega Board of Education v. Yancy*, 682 So.2d 33 (Ala. 1996); *Ex parte Tanner*, 553 So.2d 598 (Ala. 1989); and *Ex parte State Dept. of Human Resources*, 548 So.2d 176 (Ala. 1988). Likewise, the Court of Civil Appeals adopted the rationale of *Ex parte Four Seasons* in *City of Mobile v. Sumrall*, 727 So.2d 118 (Ala. Civ. App. 1999), and *Wallace v. Moore*, 684 So.2d 161 (Ala. Civ. App. 1996). The above cases establish that if a governmental employee acting in his or her official capacity gives an individual or an entity erroneous information that is relied on in good faith by the individual or entity, and which directly results in the individual or entity failing to timely appeal, the government is estopped from asserting the statute of limitations as a defense.

In this case, the Taxpayer and the Department actively communicated concerning the Taxpayer's refund claim after the Taxpayer filed its petition in October 2003. The Taxpayer submitted two letters to the Department on March 17, 2004, which provided additional information and/or documents concerning the refund claim, as requested by the Department. The Taxpayer later sent a June 21, 2004 letter to the Department that provided more information concerning its refund claim, again as requested by the Department. The above correspondence confirms that the Taxpayer had reason to believe that the Department was actively considering its refund claim up to when the Department notified the Taxpayer in writing on October 18, 2004 that its petition had been denied.

Importantly, the Department's October 18 letter also informed the Taxpayer that it had two years from that date to appeal. The Department is required to notify a taxpayer in writing within six months whether a petition has been granted or denied. Code of Ala. 1975, §40-2A-7(c)(3). The Department failed to do so in this case. Consequently, the petition was deemed denied by operation of law six months after it was filed, or on April 20, 2004. See again, §40-2A-7(c)(3). The Department was not thereafter required to notify the Taxpayer that the refund had been denied. It did so, however, pursuant to its October 18, 2004 letter. It also informed the Taxpayer in the letter that it had two years from that notice date to appeal.

In *Ex parte Tanner, supra*, the probate court issued a condemnation order on May 8, 1984, but incorrectly notified the property owners that the order had been entered on May 22. The owners appealed within 30 days from May 22, but more than 30 days from when the order was actually entered. The Supreme Court, relying on its prior decisions in *Ex parte Dept. of Human Resources* and *Ex parte Four Seasons*, held that "[a]lthough the

probate court was not required to send the Tanners notice, once it did, they were entitled to rely on the date assigned” to the condemnation order. *Ex parte Tanner*, 553 So.2d at 599.

The above rationale applies in this case. The Department was not required to send the Taxpayer the October 18, 2004 letter notifying it that the petition was being denied because the petition had already been deemed denied by operation of law on April 20, 2004. It nonetheless did so, and also informed the Taxpayer that it had two years from that date to appeal. If the Department had not sent the Taxpayer the October 18 denial letter, the burden would have been on the Taxpayer to determine how long it had to appeal, i.e., two years from when the petition was deemed denied. But because the Department sent the October 18 letter and informed the Taxpayer that it had two years from that date to appeal, the Taxpayer was entitled to rely on that information.

Estoppel would not apply if the Department had notified the Taxpayer after the appeal period had expired that it still had time to appeal. That is, an appeal period cannot be revived after it has expired. In this case, however, as in *Ex parte Four Seasons* and the other cases cited above, the erroneous information was provided while the appeal period was still open. But for the erroneous information, the Taxpayer could have appealed within two years from when the petition was deemed denied. It did not do so based on its reliance on the Department’s October 18, 2004 letter, which indicated that the Taxpayer had two years from that date to appeal. As in *Ex parte Four Seasons*, to not allow the Taxpayer to pursue its appeal “would obviously work a serious injustice. Furthermore, the public interest would not be unduly damaged by the imposition of estoppel in this case.” *Ex parte Four Seasons*, 450 So.2d at 112.

Estoppel would not, of course, apply in all cases where a Department employee gives a taxpayer erroneous advice concerning the taxpayer's appeal rights. Rather, it must be applied (or rejected) on a case-by-case basis. For estoppel to apply, the advice or information must seem reasonable on its face, and the taxpayer must rely on the advice or information in good faith. The October 18, 2004 letter informing the Taxpayer that it had two years to appeal was reasonable on its face, especially considering that the Department and the Taxpayer had actively communicated concerning the refund claim even after the refund was deemed denied in April 2004. The Taxpayer also relied on the erroneous information in good faith. Estoppel applies under the facts of this case.

The Taxpayer's appeal is reinstated on the Administrative Law Division docket. The Department should notify the Administrative Law Division by May 25, 2007 of its position concerning the substantive issue in dispute, i.e., why it denied the Taxpayer's refund petition. The case will then be set for hearing, or other appropriate action will be taken.

This Preliminary Order Granting Taxpayer's Application for Rehearing 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, §40-2A-9(g).

Entered May 2, 2007.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: J. Wade Hope, Esq.  
David Smith  
Joe Cowen  
John Rhodes