

JSC BREWTON, INC.
8182 MARYLAND DRIVE
ST. LOUIS, MO 63105,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. CORP. 07-553

FINAL ORDER

This appeal involves a final assessment of 1999 corporate income tax entered against the above Taxpayer. The final assessment includes tax, penalty, and interest. However, the Taxpayer only disputes the penalty portion of the final assessment.

The Department subsequently filed a Motion to Dismiss in which it agreed that the penalty should be waived for cause.

The Taxpayer responded to the motion by asserting that the Department had failed to respond (file its Answer) within 90 days, as required by Code of Ala. 1975, §40-2A-11(c).

It then, however, waived its right to relief under the circumstances, and requested that the Department refund to it the penalty portion of the final assessment that (presumably) had been previously paid. The Taxpayer further requested that the remaining 1999 tax and interest due should be netted against the refund due the Taxpayer for 2002. (That year is presently pending on appeal before the Administrative Law Division as Docket No. Corp. 07-554.)

The Department subsequently filed a Response to Motion to Dismiss and then an Amended Response to Motion to Dismiss.¹ The Department's position, succinctly stated, is

¹ The Response and Amended Response are confusing because the Taxpayer never filed a motion to dismiss. In effect, the Department is responding to its own motion to dismiss.

that its response was timely filed.

The merits of the Taxpayer's claim that the Department failed to timely file its Answer need not be addressed because even if correct, the Department agrees that the relief sought by the Taxpayer, the waiver of the penalty, should be granted.² The Taxpayer thus would not be entitled to any further relief, even if the Answer was late.

The 1999 final assessment, less the penalty, is affirmed. Judgment is entered against the Taxpayer for tax and interest of \$811,743. Additional interest is also due from the date the final assessment was entered, April 26, 2007.

The Taxpayer's prayer for relief in its Response to Department's Motion to Dismiss is confusing because it requests that the penalty of \$19,696 be refunded. That implies that the penalty, and presumably also the tax and interest, has been paid. The Taxpayer then also requests that the Department "net the remaining amount due with respect to the Final Assessment against its 2002 overpayment," which implies that the amount assessed has not been paid. If the 1999 final assessment has been paid, then the only action required is that the Department refund the \$19,696 to the Taxpayer. If the final assessment has not been paid, the 2002 overpayment should be applied to satisfy the 1999 tax and interest due.

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

² Dept. Reg. 810-14-1-.24(3) provides that if the Department fails to comply with any statute or regulation governing appeals, the Administrative Law Division shall "grant all or part of the relief sought by the taxpayer. . . ."

Entered December 3, 2007.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

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