

ALICE H. SMITH
P.O. BOX 134
HOUSTON, AL 35572,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 08-142

FINAL ORDER

The Department denied a refund of 2006 income tax claimed by Alice H. Smith ("Petitioner"). The Petitioner appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(c)(5)a. The case was submitted on stipulated facts and briefs. Chip Browder represented the Petitioner. Assistant Counsel Glen Powers represented the Department.

Richard R. Smith filed his individual 2006 Alabama income tax return on April 11, 2007. He failed to pay the reported tax due of \$3,124 with the return. Smith died on April 12, 2007.

Not knowing that Smith had died, the Department mailed him a notice (invoice) of 2006 tax due, plus penalties and interest, on June 12, 2007. The invoice was addressed to Smith and mailed to the address shown on his 2006 return.

The Petitioner, who was married to Smith when he died, took the Department's notice to her accountant. The accountant advised the Petitioner to pay the amount due because, according to the accountant, the Department's lien for the unpaid taxes had attached to the couple's jointly owned marital home. The Petitioner consequently paid the Department \$3,200 to satisfy Smith's liability.

The Petitioner petitioned for a refund of the \$3,200 in November 2007. The Department denied the petition. As indicated, the Petitioner timely appealed to the Administrative Law Division.

This case poses a difficult issue of first impression in Alabama. Is a person that voluntarily pays another person's tax liability later entitled to a refund of the amount paid?

The threshold question is whether the Petitioner is a "taxpayer," and thus entitled to petition for a refund pursuant to Code of Ala. 1975, §40-2A-7(c)(1). That section specifies that ". . . [a]ny taxpayer may file a petition for refund with the department. . . ."

The Department argues that the Petitioner is not a taxpayer, as defined by Code of Ala. 1975, §40-2A-3(23), because she was not liable for or required to file a return concerning the tax in issue. But §40-2A-3(23) broadly defines "taxpayer" to also include "any person that may be affected by any act or refusal to act by the department, . . ." That all-encompassing definition includes the Petitioner in this case, who is clearly affected by the Department's refusal to issue her a refund of the amount she paid to satisfy her deceased husband's tax liability.¹

The more difficult issue is whether the amount paid by the Petitioner constituted an "overpayment of tax or other amount erroneously paid to the department. . ." within the context of the refund statute, §40-2A-7(c)(1).

¹ Allowing the Petitioner to petition for a refund under the circumstances is also consistent with Code of Ala. 1975, §40-2A-2(1)(a), which provides that the Alabama Taxpayers' Bill of Rights and Uniform Revenue Procedures Act, Code of Ala. 1975, §40-2A-1 et seq., "should be liberally construed to allow substantial justice."

It is undisputed that the tax in issue was due and owed to the Department. The amount paid by the Petitioner was applied to satisfy that tax due. Consequently, there was no overpayment of tax.

The Petitioner argues that she erroneously paid the tax because she mistakenly believed, on the erroneous advice of her accountant, that she was personally liable for the tax; or more specifically, that a lien had attached to her marital home that she would be required to satisfy. The parties agree, however, that the lien for the unpaid taxes did not attach to the husband's property until the taxes were legally due on April 15, 2007. See, Code of Ala. 1975, §40-29-21. The parties further agree that when the husband died on April 12, 2007, the marital home, which was held under a joint tenancy with the right of survivorship, automatically passed to the Petitioner on that date. Consequently, the Department's lien against the husband's property never attached to the marital home, and the Petitioner otherwise was not liable for her husband's taxes. In short, the Petitioner voluntarily paid the tax based on a misunderstanding of law.

The Alabama Supreme Court has held that if one party, with full knowledge of the facts, voluntarily pays the debt of another, the amount cannot be recovered unless there is fraud, duress, or extortion. *Mt. Airy Ins. Co. v. Doe Law Firm*, 668 So.2d 534 (Ala. 1995). The Department's excellent brief on this point is quoted below.

As a general rule, Alabama courts have long recognized the defense of voluntary payment. In *Mt. Airy Ins. Co. v. Doe Law Firm*, 668 So.2d 534, 537 (Ala. 1995), the Court noted, "It has been the law in Alabama for over 150 years that where one party, with full knowledge of all the facts, voluntarily pays money to satisfy the colorable legal demand of another, no action will lie to recover such a voluntary payment, in the absence of fraud, duress, or extortion." And while the Department recognizes that the general rule regarding voluntary payments has evolved somewhat, it is, "...equally well-

settled that money voluntarily paid with full knowledge of the facts by reason of mistake of law cannot be recovered.” *Sherrill v. Frank Morris Pontiac-Buick-GMC, Inc.*, 366 So.2d 251, 257 (1978). See also *H.A. Edwards Ins. Agency v. Jones*, 7 So.2d 567 (Ala. 1942) (A person cannot recover back money which he has voluntarily paid with full knowledge of all the facts, without fraud, duress, or extortion in some form); *Rutherford v. McIvor*, 21 Ala. 750 (Ala.) (A party cannot recover money, voluntarily paid, with a full knowledge of all the facts, although no obligation to make such payment existed); *Weaver v. American Nat. Bank*, 452 So.2d 469 (Ala. 1984) (One who pays more than he owes may recover the excess if the payment was involuntary or was procured through fraud, duress, or misrepresentation.”

Department’s Amended Motion to Dismiss at 5 – 6.

The Petitioner in this case misunderstood a point of law, but was otherwise aware of all relevant facts. There was no fraud or duress asserted by the Department. To the contrary, the Department, not knowing of the husband’s death, simply mailed a tax due notice to the husband at his last known address. It made no actual or threatened claim against the Petitioner for the unpaid taxes, nor, as discussed, could it have. The Petitioner thus voluntarily paid the amount, and pursuant to the above case law, cannot now recover the amount as erroneously paid. See also, *National Bank of Boaz v. Marshall County*, 157 So. 444 (Ala. 1934).

The Petitioner cites the U.S. Supreme Court’s holding in *United States v. Williams*, 115 S. Ct. 1611 (1995) in support of her case. That case can, however, be factually distinguished.

In *Williams*, the IRS assessed a husband for unpaid income tax and filed liens on his property, including a house he jointly owned with his wife. The husband deeded his interest in the house to his wife pursuant to a divorce agreement. The wife contracted to sell the house, but was notified of the IRS lien shortly before the sale. The purchaser threatened to

sue the wife if she did not close on the sale. The wife paid the tax from the sale proceeds under protest. She then applied for a refund.

The federal government denied the refund, arguing that because the tax had not been assessed against the wife, she was not a taxpayer and did not have standing to sue for a refund.

The Supreme Court rejected the government's claim, holding that federal law allowed any person that paid a tax to petition for a refund. The Court also held that under the circumstances, the wife had been subject to the tax in issue – “The general phrase ‘subject to’ is broader than the specific phrase ‘assessed’ and, in the tax collection context before us, we think it broad enough to include (the wife). In placing a lien on her home and then accepting her payment under protest, the Government surely subjected (the wife) to a tax, even though she was not the assessed party.” *Williams*, 115 S. Ct. at 617.

Finally, the Court recognized the general rule that a person cannot challenge the tax liability of another, but found an exception under the circumstances. The Court held that the wife was only challenging the existence of the lien on her property, not the underlying assessment against the husband. The Court thus found that the wife had standing to sue for a refund. Importantly, however, the Court noted that “[w]e do not decide the circumstances, if any, under which a party who volunteers to pay a tax assessed against someone else may seek a refund. . . .” *Williams*, 115 S. Ct. at 620.

As discussed, the Petitioner in this case is a taxpayer under Alabama law, and thus has the right to petition for a refund of the tax in issue, which is consistent with the holding in *Williams*. But *Williams* can otherwise be distinguished.

In *Williams*, the government in effect subjected the wife to her husband's tax liability by placing a lien on her house, thus compelling her to pay the liability. In this case, no lien had or could have attached to the Petitioner's house, and she was otherwise not liable for the tax. Because the Petitioner was not subjected to or coerced into paying the tax in this case, the holding in *Williams* does not apply.

There is one final and perhaps overriding reason the Petitioner should not prevail. According to the Petitioner's representative, when the husband died, most of his assets automatically passed to the Petitioner by beneficiary designations and the right of survivorship deed to the house. Consequently, only a truck, a tractor, and some personal items were in the husband's "probate" estate. Those probate assets were subsequently divided between the Petitioner and her three step-children.

The representative claims that if the Petitioner is not granted a refund, she would have little chance of "recovering her erroneous payments from the limited assets that were at one time available as assets of and which comprised the late (husband's) probate estate." Petitioner's Letter Brief at 2.

The above statement may be correct, but conversely, the Department also would have no chance of recovering the tax in issue from the husband's estate. If the Petitioner had not paid the husband's taxes, the Department could have filed a claim against his estate. Given the relatively small amount involved (\$3,200), the Department would have had a reasonable chance of collecting the full amount due. But no claim was filed because the tax had been paid. If the Department issued the Petitioner a refund, it could not now go against the estate, or anyone else, for the tax due.

In *Williams*, the government argued that if the Court ruled for the wife, “parties will volunteer to pay the tax liability of others, only to seek a refund once the Government has ceased collecting from the real taxpayer.” *Williams*, 115 S. Ct. at 619. The Court rejected that scenario as “implausible.” *Williams*, 115 S. Ct. at 620. But that is exactly what would in substance happen in this case if the Petitioner is allowed a refund.

Because the Petitioner paid the tax, the Department did not pursue collection against the real taxpayer, the husband's estate. The Department cannot now collect from the estate because the assets have been distributed to the Petitioner and others. The Petitioner in effect recouped some or all of the \$3,200 because she later received some of the estate assets that otherwise would have been used to pay the husband's outstanding tax liability. While the Petitioner certainly did not intend or plan such a scenario, it would be inequitable under the circumstances to allow the Petitioner a refund in addition to receiving the estate assets.

The Department's denial of the Petitioner's refund request is affirmed. Judgment is entered accordingly.

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

Entered August 13, 2008.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Glenmore P. Powers, II, Esq.
Herbert Browder, Esq.
Kim Peterson