WILLIAM T. BLASS 7708 CLAYTON COVE PKWY. PINSON, AL 35126-2461,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
Taxpayer,	§	DOCKET NO. INC. 09-1069
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER

The Revenue Department denied refunds of 2004 and 2005 income tax requested by William T. Blass ("Taxpayer"). The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(c)(5)a. A hearing was conducted on March 2, 2010. The Taxpayer attended the hearing. Assistant Counsel Keith Maddox represented the Department.

The Taxpayer retired from Bell South in 2002. He received a tax-exempt lump-sum distribution from a Bell South defined benefit plan, which he rolled over into an IRA. He began withdrawing from the IRA in 2004. He inquired with the Department on two occasions to determine if the withdrawal was taxable. He was informed verbally by an unidentified Department employee that all IRAs are taxable. He consequently reported the IRA withdrawals as taxable income on his 2004 through 2008 Alabama income tax returns, and paid the tax due.

The Taxpayer subsequently discovered in 2009 that the IRA income was not taxable because it originated from a tax-exempt defined benefit plan. He consequently filed 2004 through 2008 amended returns in September 2009, and requested refunds of the tax previously paid on the IRA withdrawals. The Department granted the 2006, 2007, and 2008 refunds, but denied the 2004 and 2005 refunds because they were not timely claimed.

The Taxpayer appealed.

The Taxpayer acknowledges that the three year statute of limitations had expired concerning the 2004 and 2005 refunds. He claims, however, that he was erroneously informed by Department employees on two occasions that all IRA income was taxable, and that he should not be penalized based on erroneous advice from the Department.

I understand and sympathize with the Taxpayer's position. Unfortunately for the Taxpayer, the Department is obligated to strictly enforce the tax laws of Alabama, and cannot be estopped from doing so based on erroneous advice given by a Department employee. The Alabama Supreme Court addressed this issue in *State v. Maddox Tractor & Equipment Co.*, 69 So.2d 426 (Ala. 1953), as follows:

> But it is argued that the State should be estopped from taking the position which it has taken in this case and from assessing the tax when the appellees were advised that they were not responsible for the tax. In the assessment and collection of taxes the State is acting in its governmental capacity and it cannot be estopped with reference to these matters. In the case of *Duhame v. State Tax Commission*, 65 Ariz. 268, 179 P.2d 252, 260, 171 A.L.R. 684, the court said:
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> > It is true that during the time plaintiff was engaged in the contracting here in question he might have passed this tax on to the government had he not been misled, by an improper interpretation of the Act by the Commission, into believing no tax was due. Still, it is the settled law of the land and of this jurisdiction that as taxation is a governmental function, there can be no estoppel against a government or governmental agency with reference to the enforcement of taxes. Were this not the rule the taxing officials could waive most of the state's revenue.
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> See also *Durr Drug Co. v. Long*, 237 Ala. 689, 188 So. 873; *State ex rel. Lott v. Brewe*r, 64 Ala. 287, 298; *Henderson v. Gill*, 229 N.C. 313, 49 S.E.2d 754.
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> The case at bar is not a case where the State was acting in its proprietary capacity. *State v. Mobile & O. R. Co.*, 201 Ala. 271, 78 So. 47.
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> In addition to what we have said, we must take note of §100 of the Constitution of Alabama of 1901, which provides as follows:

> No obligation or liability of any person, association, or corporation held or owned by this state, or by any county or other municipality thereof, shall ever be remitted, released, or postponed, or in any way diminished, by the legislature; nor shall such liability or obligation be extinguished except by payment thereof; nor shall such liability or obligation be exchanged or transferred except upon payment of its face value; provided, that this section shall not prevent the legislature from providing by general law for the compromise of doubtful claims.
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> In view of this provision of the constitution, the doctrine of estoppel cannot be applied against the State acting in its governmental capacity in the collection of taxes duly levied by the legislature of the *State, Union Bank & Trust Co. v. Phelps*, 228 Ala. 236, 153 So. 644.

Maddox, 69 So.2d at 430.

The Taxpayer argued at the March 2 hearing that the Department is required to abate any penalties attributable to erroneous written advice given by a Department employee. Code of Ala. 1975, §40-2A-4(d). That statute is, however, limited to penalty abatements, and does not authorize the abatement of tax due. In any case, the Taxpayer in this case acted on the verbal advice of a Department employee. While it is hoped that the Department answers most all verbal inquiries correctly, verbal questions can be incomplete or misunderstood, which can result in inexact or incorrect responses.

Again, I sympathize with the Taxpayer, but can only hope that he understands the Supreme Court's rationale for why the Department cannot be estopped from strictly following the law.

The Department's denial of the Taxpayer's 2004 and 2005 refunds is affirmed.

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

Entered March 3, 2010.

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BILL THOMPSON
Chief Administrative Law Judge

bt:dr
cc: Warren W. Young, Esq.
William T. Blass
Kim Peterson