

CURTIS G. LOCKETT
8073 Hilltop Street
Mobile, AL 36619-5353,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 00-647

FINAL ORDER

The Revenue Department denied refunds of 1997 and 1999 income tax requested by Curtis G. Lockett (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 15, 2001 in Mobile, Alabama. The Taxpayer attended the hearing. Assistant Counsel Duncan Crow represented the Department.

The issues in this case are:

- (1) Is the Taxpayer's 1997 refund barred by the two year statute of limitations for claiming refunds at Code of Ala. 1975, § 40-2A-7(c)(2)a.; and,
- (2) Did the Department correctly disallow a \$50,000,000 loss claimed by the Taxpayer on his 1999 return?

The Department received the Taxpayer's 1997 Alabama return on May 17, 2000. The return included a \$500,000,000 loss on schedule D. According to the Taxpayer, that loss was the amount he would have made from selling a drug he had developed if he had not been prevented from doing so by various federal and state government officials. The return requested a refund of \$2,724 withheld during the year.

The Department received the Taxpayer's 1998 return on April 17, 2000. That return also included a

\$500,000,000 loss on Schedule D, and claimed a refund of the \$2,600 withheld during the year.

The Department received the Taxpayer's 1999 Alabama return on May 20, 2000. The 1999 return claimed only a \$50,000,000 loss on Schedule D. (The Taxpayer contends that the 1999 loss also should have been \$500,000,000.) The 1999 return claimed a refund of \$2,777 withheld during the year.

The Department disallowed the \$500,000,000 loss claimed in 1997, but allowed an unidentified \$62,500 business loss. That loss resulted in a \$0 liability for the year. However, the Department refused to issue the Taxpayer a refund of the tax withheld because the refund claim (return) was not filed within two years, as required by § 40-2A-7(c)(2)a.

The Department processed the 1998 return, and refunded the entire \$2,600 as claimed. The Department later audited the 1998 return, disallowed the \$500,000,000 loss, and reduced the Taxpayer's refund to only \$1,307. The Department subsequently assessed the Taxpayer for the \$1,293 that it claims was erroneously refunded. The Taxpayer appealed the final assessment to the Administrative Law Division (Inc. 01-277). That appeal is set for hearing on June 22, 2001.

The Department audited the 1999 return, disallowed the claimed \$50,000,000 loss, and reduced the refund to \$339. The Department applied that amount to the 1998 tax due.

Issue 1 - Was the 1997 refund timely claimed?

Section 40-2A-7(c)(2)a. provides generally that a refund must be claimed within three years from the date the return was filed, or two years from payment of the tax, whichever is later. However, if no return was timely filed, a taxpayer must claim a refund within two years from when the tax was paid. For purposes of the

statute, tax paid through withholding is deemed paid on the original due date of the return.

The 1997 tax in issue was paid through withholding. The Taxpayer thus had two years from the original due date of the 1997 return, or until April 17, 2000, to claim a refund.¹ The Department did not receive the Taxpayer's 1997 return until May 17, 2000. Consequently, the 1997 refund was correctly denied.

The Taxpayer argues that he timely mailed the 1997 return by the due date. Unfortunately for the Taxpayer, he failed to provide any evidence to support that claim.

Issue (2) - Was the \$50,000,000 loss correctly disallowed?

Concerning the 1999 tax year, the burden was on the Taxpayer to prove he was entitled to the \$50,000,000 loss claimed on his return. *Betson v. Commissioner*, 802 F.2d 365 (1986). The Taxpayer failed to provide such proof. The Department thus properly disallowed the loss and reduced the Taxpayer's 1999 refund. It also properly applied the reduced refund amount to the Taxpayer's 1998 liability. Code of Ala. 1975, § 40-2A-7(c)(4).

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

Entered May 15, 2001.

¹April 15, 2000 was on a Saturday. Consequently, the due date moved to the next business day, Monday, April 17, 2000. See, Dept. Reg. 810-1-5.01(1)(b).

