

WANDA B. RAHMAN
2617 CHARLOTTE OAKS DRIVE
MOBILE, AL 36695-3781,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§ STATE OF ALABAMA
DEPARTMENT OF REVENUE
§ ADMINISTRATIVE LAW DIVISION

§ DOCKET NO. INC. 09-874

§

§

FINAL ORDER

The Revenue Department assessed Wanda B. Rahman (“Taxpayer”) for 2005, 2006, and 2007 income tax. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a . A hearing was conducted on February 5, 2010. The Taxpayer was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Duncan Crow represented the Department.

The Taxpayer was married during the years in issue. She timely filed her 2005, 2006, and 2007 married, filing separate Alabama income tax returns in April 2006, April 2007, and April 2008, respectively. She claimed itemized deductions on the returns, and received refunds in each year.

The Taxpayer’s husband (now ex-husband) failed to timely file Alabama returns for the years in issue. The couple separated and initiated divorce proceedings in 2007. The Taxpayer’s husband subsequently filed returns for the subject years in August 2008. He claimed the standard deduction on the returns. The couple were finally divorced in October 2008.

The Department reviewed the ex-husband’s returns and determined that because he had claimed the standard deduction on the returns, the Taxpayer was also required to use the standard deduction in lieu of itemizing. It adjusted the Taxpayer’s returns accordingly,

and entered preliminary assessments against the Taxpayer on May 26, 2009. The Taxpayer petitioned for a review of the preliminary assessments. The Department rejected the petition and entered the final assessments in issue. The Taxpayer timely appealed.

The Taxpayer also filed a 2008 Alabama return on which she claimed a refund of \$642. The Department applied that refund in May 2009 to the Taxpayer's adjusted 2005 liability. The final assessments for all three years were entered on August 5, 2009.¹

Unfortunately for the Taxpayer, the Department is correct that Alabama law requires that if a married couple files separate Alabama returns, and one spouse claims the standard deduction, the other spouse can only be allowed the standard deduction. Code of Ala. 1975, §40-18-15(d). The Department is also correct that when the returns are filed by the husband and wife is irrelevant. Consequently, the fact that the Taxpayer timely filed her returns and her ex-husband did not is of no legal consequence.

The Taxpayer is, however, entitled to some relief. As indicated, in May 2009, the Department applied the Taxpayer's 2008 refund due to her adjusted 2005 liability, i.e., the amount she owed after she was allowed the standard deductions in lieu of itemized deductions in that year. The Department can, however, only apply a refund due a taxpayer to any final tax liability owed by the taxpayer. See, *Van Kampen v. State of Alabama, Inc.* 09-560 (Admin. Law. Div. 1/21/2010). The Taxpayer's 2005 liability clearly is not a final liability because it is currently being contested on appeal. The 2008 refund was thus improperly applied to the Taxpayer's contingent 2005 liability.

¹ The 2005 final assessment was for the tax due after the 2008 refund was applied.

The Department also failed to timely assess the Taxpayer for 2005. She timely filed her 2005 return in April 2006. The Department thus had three years from the April 15, 2006 due date to assess the Taxpayer for any additional tax due. Code of Ala. 1975, §40-2A-7(b)(2). It entered the 2005 preliminary assessment against the Taxpayer on May 26, 2009, or more than three years from the return's due date. The 2005 tax year was thus out of statute, and the final assessment in issue for that year is voided.

The 2006 and 2007 final assessments are due to be affirmed. The Taxpayer's 2008 refund of \$642 that was erroneously applied to 2005 should instead be applied to the 2006 liability, which leaves a balance due for that year of \$252.22. Judgment is entered against the Taxpayer for 2006 tax and interest of \$252.22, and 2007 tax and interest of \$863.89.

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

Entered February 18, 2010.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Duncan R. Crow, Esq.
Wanda B. Rahman
Kim Peterson