

MELANIE STROTHER	§	STATE OF ALABAMA
BARBARA A. STROTHER		DEPARTMENT OF REVENUE
P.O. BOX 90311	§	ADMINISTRATIVE LAW DIVISION
NASHVILLE, TN 37209,		
	§	DOCKET NOS. INC. 10-500
Taxpayers,		INC. 10-501
	§	
v.		
	§	
STATE OF ALABAMA		
DEPARTMENT OF REVENUE.	§	

FINAL ORDER

These consolidated appeals involve denied refunds of 2006 Alabama income tax requested by Melanie Strother and her sister, Barbara Strother (together "Taxpayers"). The Taxpayers separately appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(c)(5)a. The cases were consolidated and heard together on September 16, 2010. Melanie Strother represented both Taxpayers. Assistant Counsel Wade Hope represented the Department.

The issue in this case is whether the Taxpayers timely petitioned for refunds of the amounts they overpaid concerning their 2006 Alabama income tax liabilities.

Melanie Strother filed her 2006 Alabama income tax return on November 10, 2009. The return reported tax paid of \$10,640, and a refund due of \$8,352. The amount paid consisted of an overpayment of \$1,640 carried over from her 2005 return, \$1,000 paid by check on June 5, 2007, and \$8,000 paid by check on January 15, 2008. As indicated, the 2006 return was subsequently filed on November 10, 2009.

The Department denied the refund because it was not claimed within two years from the original due date of the return, citing Code of Ala. 1975, §40-2A-7(c)(2)a.(ii). That statute provides that if a taxpayer fails to timely file a return, taxes paid by withholding or

estimated payments are deemed paid on the original due date of the return. The taxpayer then has two years from that date to petition for a refund or credit of any amount overpaid.

Barbara Strother also filed her 2006 Alabama return on November 10, 2009. Her return reported tax paid of \$14,166, and a refund due of \$6,691. The \$14,166 was paid as follows: a \$2,000 check submitted on April 16, 2007; a \$4,000 check submitted on June 14, 2007; a \$4,000 check submitted on October 15, 2008; and a 2005 refund check from the Department to Barbara Strother for \$5,723.41 that was returned to the Department with the 2006 Alabama return.¹

The Department also denied the above refund because it was not claimed within two years from the due date of the return, again citing §40-2A-7(c)(2)a.(ii).

It is well-settled Alabama law that if a taxpayer fails to timely file an income tax return, the taxpayer must petition for a refund or credit of tax overpaid within two years from when the tax was paid. Section 40-2A-7(c)(2). For purposes of the statute, tax paid by withholding or by estimated payment during the year is deemed paid on the original due date of the return. Any refund claimed after the two year statute has expired must be denied. See generally, *State v. Pettaway*, 794 So.2d. 1153 (Ala. Civ. App. 2001).

The Department argues that the refunds must be denied because the tax in issue was paid by estimated payment, and the Taxpayers failed to petition for refunds within two years from the April 15, 2007 due date of the returns. I disagree because, with one

¹ Melanie Strother explained at the September 16 hearing that her sister's 2005 overpayment should have been applied to her 2006 liability, but that the Department instead issued her the \$5,723.41 refund check for the year on February 5, 2009. As indicated, that check was returned to the Department as a payment with Barbara Strother's 2006 return.

exception, the tax in issue was not paid by “estimated payment,” as that term is used in §40-2A-7(c)(2)a.

As discussed, §40-2A-7(c)(2)a.(ii) allows taxpayers two years from the original (April 15) due date of an income tax return to file a return and request a refund of any tax overpaid “through withholding or by estimated payment.” Reading that statute in context, the term “estimated payment” clearly means any quarterly estimated tax payments made during the tax year (or by January 15 of the subsequent year) pursuant to Code of Ala. 1975, §§40-18-82 and 40-18-83. Those sections require an individual that expects to receive non-wage income of over \$1,875 in a year to report and pay estimated tax on the income in four quarterly installments. The quarterly payments are due on April 15, June 15, and September 15 of the tax year, with the fourth quarterly payment due by January 15 of the next year. It is those quarterly estimate payments that are deemed paid on the due date of the subject year return.²

The taxes paid by the Taxpayers toward their 2006 liabilities were not, with one exception, paid by estimated payment. The payments thus were not deemed to have been paid on the April 15, 2007 due date of the 2006 returns. Rather, the Taxpayers had two years from when the taxes were actually paid to petition for refunds of the amounts overpaid.

² The Department also allows a taxpayer to carryover an overpayment from a prior year’s return as an estimated tax payment for the subsequent year. Those payments made before the taxpayer’s liability for the subsequent tax year becomes due also constitute estimated payments in the context of §40-2A-7(c)(2)a.

Melanie Strother paid her 2006 tax by carrying over \$1,640 as an overpayment from 2005, submitting a check for \$1,000 on June 6, 2007, and submitting a check for \$8,000 on January 15, 2008.

The \$1,640 carried over from 2005 to 2006 constituted an estimated payment for 2006. Consequently, that amount cannot be refunded because it was not claimed within two years from the April 15, 2007 return due date.

The \$1,000 check submitted on June 6, 2007 was not an estimate payment, but it also cannot be refunded because it was not claimed within two years from when actually paid.

The \$8,000 check submitted on January 15, 2008 was timely claimed within two years when the 2006 return was filed in November 2009. Melanie Strother should thus be issued a 2006 refund of \$8,000, plus applicable interest from the date of payment.

Barbara Strother paid her 2006 Alabama tax by checks submitted on April 16, 2007, June 14, 2007, and October 15, 2008. She also paid \$5,723.41 with her return in November 2009 when she returned her 2005 Alabama refund check in that amount to the Department.

The April 16, 2007 and June 14, 2007 payments were not estimate payments, but still cannot be refunded because they were not claimed within two years from the date of actual payment. The October 15, 2008 payment of \$4,000 was timely claimed within two years. Likewise, the \$5,723.41 refund check submitted (paid) with the return was also timely claimed. Barbara Strother is thus entitled to the refund of \$6,691 claimed on her 2006 return, plus applicable interest from the payment dates.

The Department is directed to issue refunds to Melanie Strother for \$8,000 and Barbara Strother for \$6,691, plus applicable interest as indicated above. 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 September 28, 2010.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Lionel C. Williams, Esq.
Melanie Strother
Kim Peterson