

VALIDATA COMPUTER AND  
RESEARCH CORPORATION  
P.O. BOX 4720  
MONTGOMERY, AL 36103-4720,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

§  
§  
§  
§  
§  
§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. W. 12-1276

**FINAL ORDER DENYING DEPARTMENT'S  
APPLICATION FOR REHEARING**

A Final Order was entered in this case on April 19, 2013 directing the Department to issue the Taxpayer a refund of \$3,620.72. That amount constituted penalties that were paid by the Taxpayer that were subsequently waived for cause. The Department has timely applied for a rehearing.

The Department argues that the above refund amount includes a \$50 penalty for November 2012 that the Taxpayer never paid. It thus contends that the refund should be reduced by \$50. It also claims that the Taxpayer has not paid its withholding taxes for March 13, 2013 in the amount of \$916.38, plus penalty and interest, and that the refund should be further reduced by that amount.

Concerning the \$50 penalty for November 2012, the evidence shows that the Department assessed or applied a \$50 penalty against the Taxpayer for that month. The Department's records presently show that the Taxpayer owns no tax, penalty, or interest for any past period. Consequently, I can only conclude that the Taxpayer paid the \$50 penalty for November 2012. That amount should accordingly be included in the refund.

Concerning the Taxpayer's March 2013 liability, the Taxpayer submitted a copy of its March 2013 return and a check for \$916.38 that paid the reported tax due for that month in

full. As indicated, the Department's records show that the Taxpayer does not owe any tax, penalty, or interest for any past period.

But even if the March 2013 liability was still outstanding, the Department could not apply that contingent liability to offset the refund. Code of Ala. 1975, §40-2A-7(c)(4) provides that the Department may apply a refund due "against any outstanding final tax liability due and owing by the Taxpayer to the department. . . ." The Taxpayer's March 2013 liability, even if still outstanding, would not be a fixed, final liability to which the refund in issue could be applied. See generally, *Van Kampen v. State of Alabama*, Docket Inc. 09-560 (Admin. Law Div. 1/21/10).

The Department's application for rehearing is denied. The April 19, 2013 Final Order is affirmed. The Department should issue the Taxpayer the refund in due course, plus applicable interest until the date of payment.

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

Entered June 13, 2013.

---

BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: Gwendolyn B. Garner, Esq.  
William B. Sellers, Esq.  
Neal Hearn