

ALABAMA TAX TRIBUNAL

ALAN P. MAYES,	§	
Taxpayer,	§	DOCKET NO. INC. 23-941-LP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

FINAL ORDER

This appeal involves the denial of a request for a refund of income tax for 2020. A hearing was conducted on June 13, 2024. The Taxpayer appeared through his attorney, Barry Vickery. Ralph Clements represented the Revenue Department, and Tina Smith appeared and testified for the Revenue Department.

At the hearing, Ms. Smith testified that the Taxpayer did not file a tax return until 2023. Ms. Smith explained that when processing the Taxpayer’s 2021 return, which included an indication that the 2020 tax return had been filed, the Revenue Department discovered the lack of a 2020 return from the Taxpayer. The Revenue Department then notified the Taxpayer of the deficiency for 2020, and the Taxpayer filed a 2020 return on May 5, 2023, claiming a refund of tax paid by withholding. The Revenue Department ultimately denied the refund because it was not timely claimed, as required by Alabama Code § 40-2A-7(c)(2)a. The Taxpayer then appealed.

Mr. Vickery stated the Taxpayer utilized a CPA to prepare and file his 2020 tax return before the May 17, 2021, extended deadline. However, the Taxpayer’s Alabama Form-40 failed to transmit electronically at that time; the Taxpayer was

unaware of this failure. The Taxpayer received a letter from the Revenue Department dated April 26, 2023, reminding him to file his 2020 return. In response to the letter, the Taxpayer filed his 2020 Alabama return on May 5, 2023, and requested his refund.

Alabama Code § 40-2A-7(c)(2)a. provides:

A petition for refund shall be filed with the department or an automatic refund issued pursuant to Section 40-29-71, or a credit allowed, within (i) three years from the date that the return was filed, or (ii) two years from the date of payment of the tax, whichever is later, or, if no return was timely filed, two years from the date of payment of the tax. For purposes of this paragraph, taxes paid through withholding or by estimated payment shall be deemed paid on the original due date of the return.

(emphasis added). The original due date for the filing of the Taxpayer's 2020 Alabama individual income tax return was April 15, 2021. The Revenue Department issued a notice extending the due date for filing 2020 individual income tax returns until May 17, 2021, because of the Covid-19 pandemic. Notice, Ala. Dep't of Revenue, March 18, 2021.

The Taxpayer contends that the extension of the deadline to file 2020 returns renders his May 5, 2023, filing within the two-year period allotted by § 40-2A-7(c)(2)a and thus timely. However, the Revenue Department's extension of the filing deadline for 2020 returns did not alter the application of Alabama Code § 40-2A-7(c)(2)a., which states that "taxes paid through withholding . . . shall be deemed paid on the original due date of the return." See *Wynn v. Ala. Dep't of Revenue, INC.* 22-1202-JP (Ala. Tax Trib. Nov. 6, 2023) (emphasis added); see also *State v. Pettaway*, 794 So. 2d 1153 (Ala. Civ. App. 2001). In other words, the tolling period to claim a refund when

the taxes are paid through withholding begins on the original deadline, which was April 15, 2021, in this case, rather than any later date because the original date is the date the taxes are considered paid. The Revenue Department's extension of the deadline created a new, or second, due date, while the original due date remained April 15, 2021.

The Taxpayer argues that the language of Section 40-18-27(c) ties the original due date for 2020 Alabama individual income tax returns to the May 17, 2021, deadline. Section 40-18-27(c) reads in pertinent part: "Returns shall be filed by the same date as the corresponding federal income tax returns are required to be filed as provided under federal law."

Under federal law, the due date for personal income tax returns is governed by 26 U.S. Code § 6072(a), which states that "returns made on the basis of the calendar year shall be filed on or before the 15th day of April following the close of the calendar year."

Due to disruptions from COVID-19, the deadline for the 2020 tax returns was changed by the IRS in Notice 2021-21:¹ "the due date for filing Federal income tax returns in the Form 1040 series...having an original due date of April 15, 2021, is automatically postponed to May 17, 2021." (emphasis added).

Since the original due date for the federal personal income tax returns was April 15, 2021, the original due date for Alabama individual income tax returns was

¹ Under 26 U.S. Code § 7508A(a), the Secretary of the Treasury is permitted to extend tax deadlines due to an emergency declaration by the President.

also April 15, 2021.

Again, Section 40-2A-7(c)(2)a indicates that when a taxpayer pays taxes through withholding, that taxpayer's taxes are considered paid on the original due date of the return. Together, 26 U.S. Code § 6072(a) and Alabama Code § 40-18-27(c) establish an original due date of April 15 for both federal and Alabama income tax returns. While the Revenue Department "may grant a reasonable extension of time for filing returns" under Alabama Code § 40-18-27(c), that extension does not alter the original deadline of April 15.

As indicated by both Ms. Smith's testimony and the Taxpayer's arguments, the Taxpayer did not file his 2020 return until May 5, 2023. Further, the refund request involved taxes that were paid through withholding. Because the Taxpayer filed his 2020 return late, the tolling period began on the original due date, April 15, 2021, and he had two years from that date, or until April 15, 2023, to file his request for a refund of 2020 income taxes. He did not do so. Consequently, the refund was properly denied by the Revenue Department. As the Alabama Court of Civil Appeals held in *Pettaway*, ". . . if the Taxpayer files an income-tax return more than two years after the original due date and requests a refund of taxes that were paid through estimated payments or through withholding, the refund must be denied, as a matter of law, because the refund request is outside the limitations period for claiming a tax refund." 794 So. 2d at 1157 (emphasis added).

Because the Taxpayer did not request his refund within the two-year period, the Revenue Department was required by statute to deny the refund request. The

Revenue Department's denial of the Taxpayer's refund request is upheld, and judgment is entered accordingly.

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

Entered November 13, 2024.

/s/ Leslie Pitman
LESLIE PITMAN
Associate Judge
Alabama Tax Tribunal

lhp:thb

cc: Barry E. Vickery
Ralph M. Clements III, Esq.