

MEETING OF THE TAX SECTION - ALABAMA STATE BAR
ALABAMA CENTER FOR COMMERCE
MONTGOMERY
May 12, 2009

RECENT JUDICIAL AND ADMINISTRATIVE DEVELOPMENTS

1. *EX PARTE G. THOMAS SURTEES; EX PARTE VULCAN LANDS, INC.*, ___ So.2d ___, 2008 WL 4369259 (Ala. 2008)

Foreign corporation franchise tax - remedy

SUMMARY

- Vulcan requested refund for 1999.
- Parties filed cross motions for summary judgment.
- Trial court: No issues of material fact, and ADOR entitled to judgment as matter of law
- Court stated that "competitive injury" was basis of Commerce Clause violation, and that a TP's injury - refund amount - is difference between what TP paid and what a similarly-situated domestic competitor would have paid.
- Court further stated that TP cannot prove economic damage from being disfavored without the presence of actual, and not speculative, favored competitor.
- Vulcan offered no evidence of domestic competitor - thus, there was no injury, and no refund is due.
- Surtees offered evidence that Vulcan was not a normal competitive entity, but was created for administrative efficiency of corporate group, and was insulated from competitive pressures.

APPEAL.

- Vulcan appealed to Court of Civil Appeals (#2060607).
- CCA affirmed in part, reversed in part, and remanded (11/30/07).
- CCA affirmed denial of Vulcan's SJ motion, because ADOR had presented genuine issue of material fact, *i.e.*, that ADOR relied on now-overturned precedent and that ADOR faces extreme hardship if it has to pay refund.
- CCA reversed as to ruling that Vulcan had to show that it had a domestic competitor who was favored in order to get a refund.

CERT

- Both parties petitioned ALSC for cert, and both petitions were granted.
- ALSC held that ADOR had abandoned its reliance on overturned precedent prior to Vulcan's first tax payment, as evidenced in O/A before US Supreme Court in *South Central Bell* on 1/19/99. Therefore, Vulcan entitled to SJ on this point - "reliance-hardship" defense not available to ADOR here.
- As to "domestic competitor" issue, ALSC stated that company is not required to find a mirror-image domestic competitor to attain refund. Therefore, CCA is affirmed as to this issue (in favor of Vulcan).
- Court then remanded for consideration of newly-raised issues, such as how much Vulcan would have paid if it had been a domestic corporation.

2. EX PARTE VFJ VENTURES, INC., ___ So.2d ___, 2008 WL 4277998 (Ala. 2008)

Corporate income tax - AL's "add-back" statute (§ 40-18-35(b))

SUMMARY

- December 2001: Alabama passed "add-back" statute, denying deductions for royalty and interest payments made to related members.
- January 24, 2007: Judge McCoocy ruled in favor of VFJ as to unreasonableness exception, granting to VFJ a full exception to ABS.

APPEAL

- ADOR filed appeal to Court of Civil Appeals.
- On 2/8/08, CCA reversed trial court, and held in favor of ADOR on all issues. CCA held that trial court misinterpreted "unreasonableness" exception, by invoking it upon a showing of "ordinary and necessary" expenses and "business purpose". Also, CCA held that "subject to a tax" exception is to be interpreted on post-apportionment basis, and that "subject to a tax" exception is not unconstitutional.

CERT

- ALSC held oral argument on 9/3/08.
- On 9/19/08, ALSC affirmed CCA decision in favor of ADOR, and adopted CCA opinion as its own.
- VFJ petitioned U.S. Supreme Court for cert on 1/21/09 (#08-916).
- April 27, 2009: cert denied

3. *EX PARTE ADOR (KIMBERLY-CLARK CORP. & KIMBERLY-CLARK WORLDWIDE, INC. v. ADOR)*, Alabama Supreme Court (#1070925)

corporate income tax – “business” vs. “non-business” income

SUMMARY

- KC and KCW sold mill and timberland division located in AL.
- ADOR took position that gain did not meet “transactional” test, and was non-business income, allocable to AL.
- Assessments total approximately \$21M.
- ALJ ruled that gain was “business” income, but declined to grant KC’s request to exclude gain from numerator of sales factor as “incidental or occasional sale” (“special rule”).

APPEAL

- ADOR appealed to circuit court; KC/KCW appealed “special rule” issue.
- Trial court ruled that gain did not meet transactional test, and was non-business income, pursuant to *Uniroyal* (7/24/07).
- KC appealed to CCA, which reversed trial court as to “business” vs. “non-business” income issue, and remanded for trial court to consider “special rule” issue (3/21/08).

SUBSEQUENT ACTION

- On 5/8/09, ALSC granted ADOR’s petition for writ of cert.

4. *AT&T CORPORATION v. G. THOMAS SURTEES & ADOR*, 953 So.2d 1240 (Ala. Civ. App. 2006)

business privilege tax and corporate shares tax – deductions - constitutionality

SUMMARY

- AL’s BPT and CST statutes allowed deductions for corporation’s investments in subsidiaries “doing business in Alabama.”
- AT&T argued that deduction language violated Commerce Clause by limiting deductions to investments in those “doing business in Alabama”, thus favoring Alabama over other states.
- Trial court (Judge Vowell) agreed with ADOR, focusing on fact that the effect of the deductions was to prevent the same net worth from being subjected to tax twice by Alabama.

CIVIL APPEALS OPINION

- Appellate court reversed trial court, holding that deduction statutes were unconstitutionally discriminatory.
 - ADOR applied for rehearing, asking court to address ADOR's argument that, even if there was unconstitutionality, only remedy would be to strike deduction statutes, because the expanding of deduction statutes to include investments in all subsidiaries would violate "separation of powers" doctrine.
 - Appellate court granted rehearing and remanded case to trial court for consideration of remedy.
 - Trial court ruled that ADOR failed to show valid justification for discriminatory provisions, and court referred question of remedy to mediator.
 - Parties settled on refund amount.
5. *ADOR v. WELLS FARGO FINANCIAL ACCEPTANCE ALABAMA, INC., et al.*, ___ So.2d ___, 2008 WL 4952480 (Ala. Civ. App. 2008)

sales tax refunds - "bad debt rule" - credit sales - eligibility of claimants

SUMMARY

- Purchasers bought tangible personal property on credit from Dealers/Retailers.
- Retailers assigned accounts to Claimants "without recourse" in exchange for payments that included sales tax amounts due.
- Sales tax was reported and remitted by Retailers.
- Claimants then became entitled to payments from Purchasers.
- Purchasers defaulted - some property was repossessed - all accounts had uncollectible balances.
- ALJ ruled in favor of ADOR that Claimants were not entitled to refunds.
- Circuit court reversed, ruling that Claimants have right to assert refund claim in own right by virtue of Retailers' express assignments to Claimants - Claimants can assert their own rights and rights of Retailers, as assignees.

APPEAL

- Court of Civil Appeals reversed trial court, holding in favor of ADOR.
- CCA discussed sales-tax reporting on credit sales (report only when collected -- § 40-23-8), and "bad-debt" rule.

- CCA also discussed procedures for requesting refunds – strict compliance required; petition may be filed by TP, defined as one who is liable for the tax or required to file return; and petition must be filed jointly by TP who collected and remitted tax and by consumer, with minor exceptions.
- CCA held that general assignments to finance companies did not assign to them the right to petition for refunds, because general assignment law did not supersede specific tax-refund laws.
- CCA also held that no refund would have been due, despite assignment issue, because there was no overpayment of tax. Retailers received full purchase price and all sales tax due from companies on retail sales. Retailers were required to report tax on those amounts and remit tax accordingly. There was no uncollectible account and, thus, no overpayment. Retailers never would have qualified for a refund pursuant to “bad-debt” rule, because there were no sales-tax remittances on credit sales. There could have been no assignment, therefore.
- Companies petitioned ALSC for cert (# 1080318), and petition was denied on 4/10/09.

6. *NORFOLK SOUTHERN RAILWAY CO. v. ADOR & TIM RUSSELL, AS COMMISSIONER*, 550 F.3d 1306 (C.A. 11th Cir. 2008)

sales & use taxes – diesel fuel – rail transportation – 4R Act

SUMMARY

- NS alleged violation of 4R Act, claiming that AL’s sales and use tax imposition discriminated against rail carriers, because its competitors were either exempt from such tax (motor carriers) or were only minimally exposed to the tax (water carriers only operating intrastate).
- U.S. District Court considered taxes other than sales and use taxes, and ruled that rail carriers do not pay disproportionate amount of taxes in comparison to direct competitors.
- Injunction denied

APPEAL

- Eleventh Circuit relied upon U.S. Supreme Court case: “The Supreme Court did acknowledge, however, that a case in which “the railroads—either alone or as part of some isolated and targeted group—are the only commercial entities subject to an ad valorem property tax” could call into question whether the state had really “exempted” other commercial entities and could indicate a 4-R Act violation. *ACF Indus.*, 510 U.S. at 346-47, 114 S.Ct. 843. Nonetheless, as a result of *ACF Industries*, while the 4-R

Act prohibits the imposition of discriminatory property tax rates, the Act does not prevent a state from exempting other commercial entities from such taxes and leaving taxes on railroads in place, so long as the railroad is not targeted. While in Norfolk's case we are dealing with exemptions to a sales and use tax, rather than an ad valorem tax as in ACF Industries, the Supreme Court's analysis is equally applicable."

- District Court's denial of injunctive relief to Norfolk Southern was affirmed.

7. *RHEEM MANUFACTURING CO. v. ADOR*, ___ So.2d ___, 2009 WL 497953 (Ala. Civ. App. 2009)

TBOR – jurisdiction – Administrative Law Division – petition for refund

SUMMARY

- The Court of Civil Appeals of Alabama recently decided that the ALD lacked jurisdiction to consider an issue that had not been first presented to the ADOR in a company's petition for refund, citing *Gladwin*.
- The court noted that the ALD only had authority pursuant to the TBOR to determine whether issues that had been presented to and rejected by the ADOR were decided correctly. The company's failure to present a particular issue to the ADOR as a ground for refund precluded the ALD's consideration of that ground, because the ADOR had not been given an opportunity to consider that issue.

REVIEW

- Rheem petitioned the Alabama Supreme Court for cert review on March 12, 2009 (# 1080668).

8. *IEC ARAB ALABAMA, INC. v. CITY OF ARAB AND ALABAMA DEPARTMENT OF REVENUE*, ___ So.2d ___, 2008 WL 3877779 (Ala. Civ. App. 2008)

use-tax exemption – amendment – retroactivity

SUMMARY

- IEC did not make retail sales during 1990-97, so it was not responsible for collecting sales tax during that period. It paid no use tax during that period, relying on § 40-23-62(1) before its amendment in 1997. The pre-amendment version exempted from use tax "[p]roperty, the gross proceeds of sales of which are **required to be included in the measure of**

the tax..." Purchases made by IEC from Alabama sellers were subject to AL sales tax, so that property was exempt from use tax pursuant to the pre-amendment version of the statute. IEC claimed that any purchases made by it from out-of-state sellers theoretically were subject to AL sales tax if title passed in AL, so such property also was exempt from use tax pursuant to pre-amendment version.

- Legislature amended statute in 1997 to exempt "[p]roperty, on which the sales tax imposed by the provisions of Article 1 of this chapter is paid by the consumer to a person licensed under the provisions of Article 1 of this chapter". Amendment applied retroactively to "all open tax years," and it became effective on 5/7/97. ADOR assessed IEC for sales and use tax for 1990-97, and IEC appealed to ALD. Sole issue was whether ADOR could apply amendment retroactively. ALJ ruled that ADOR could go back only 3 years immediately preceding preliminary assessments. Circuit Court reversed, and ruled that ADOR assess for 1990-97 period.

APPEAL

- "When a court is called on to consider whether retroactive legislation is constitutional, its focus is on whether the retroactivity of the legislation denies due process. *Id.* at 473-74 (quoting *United States v. Carlton*, 512 U.S. 26, 30-31, 114 S.Ct. 2018, 129 L.Ed.2d 22 (1994)). In *Carlton*, "the [United States Supreme] Court set forth the test to determine whether retroactive tax legislation denies due process: first, the legislation must be 'supported by a legislative purpose furthered by rational means,' and second, the period of retroactivity must be 'modest.'" *Valhalla Cemetery Co.*, 749 So.2d at 474 (quoting *Carlton*, 512 U.S. at 31, 114 S.Ct. 2018)." Opinion p. 4.
- CCA disagreed with positions of the parties: "ADOR argued that retroactivity provision was open-ended, but CCA rejected that argument, and also rejected argument of IEC based on ALJ's ruling. "To give effect to the language in § 3 of Act No. 97-301 for the purpose of this case, we need only consider that the amendment of § 40-23-62(1) was essentially effective retroactively to May 1994, that is, three years before Act No. 97-301 became law and three years from the due date of the taxes that would have been due under the amended statute as of May 1994. ... However, the tax years before May 1994 were not reopened by the retroactive application of Act No. 97-301, because, as of the effective date of the amendatory act, those tax years were already closed. That is, the tax years before 1994 were closed because, until the act became effective in May 1997, Accutek was not required to file a use-tax return for those years under the preamendment wording of § 40-23-62(1), and the three-year period from the due date of any taxes that would have been due under the newly amended language of the statute had it been in effect during those

years before 1994 had ended. The retroactivity provision did not serve to reopen those tax years because they were forever closed to the Department at the time the act became effective. *Ex parte State Dep't of Revenue*, 667 So.2d 1372, 1374 (Ala.1995) (“[T]he power to extend a limitations period can be exercised only where the bar was not complete before the enactment of the statute extending the period”).” Opinion p. 6.

- ADOR filed cert petition on 9/5/08, and petition was denied on 10/31/08.

9. *WEINRIB v. WOLTER*, 1 So.3d 1032 (Ala. Civ. App. 2008)

property tax – residential property under construction - classification

SUMMARY

- Wolters owned real property in Jefferson County zoned single-family dwelling.
- Wolters were constructing their personal family residence.
- Tax assessor classified property as Class II – not otherwise classified – instead of Class III – single-family owner-occupied residential.
- Trial court ruled for property owners.

APPEAL

- CCA held in favor of tax assessor: “We conclude that § 40-8-1 and Art. XI, § 217(a), are unambiguous as written and require that residential property, in order to be classified as Class III property, must be being *used* by the owners as their dwelling at the time taxes are assessed.” p. 1035.
- ALSC denied cert on 7/25/08, Justice Murdock writing a dissent (1 So.3d 1036).

10. *CAPITOL MACHINE & EQUIPMENT CO. LLC & ITS MEMBERS: SUN ENTERPRISES LLC, ROBERT W. SHIVER v. ADOR*, Administrative Law Division, S. 08-619 (Final Order, 4/20/09)

sales tax – machine rate – liability of individual members

SUMMARY

- TP manufactures and sells pneumatic insulation blowing machines.
- TP sells primarily to industrial contractors, who use machines to blow loose-fill and wet-spray insulation.

RULING

- ALJ ruled that machines qualify for reduced machine rate (1 ½%), because machines "process" compacted insulation into intended final use.
- ALJ rules that members of LLC are not personally liable for taxes owed by LLC, besides income tax, because § 10-12-20(a) provides that members are not personally liable for debts of LLC. ALJ concludes that *Bayside Tire & Exhaust, LLC v. State*, ALD, W. 98-272 (10/13/98), was decided incorrectly.
- ALJ states that members still could be held liable for 100% penalty.

11. THYSSENKRUPP SAFEWAY, INC. v. ADOR, ALD, S. 08-401 (Final Order, 3/18/09)

lease tax - scaffolding - separate contract for erecting scaffolding

SUMMARY

- TP leased scaffolding to contractors and industrial customers in AL. With less than 20% of its lessees, it also separately contracted to erect the scaffolding. ISSUE: Whether the fees for erecting scaffolding for its lessees were taxable for lease-tax purposes.
- Lessees signed standard contracts for the leasing of scaffolding, and either picked up scaffolding at TP's business or directed TP to deliver. Lessees were responsible for erecting scaffolding. Some did it themselves, some hired third parties, and some contracted with TP. TP also contracted with some customers for the erecting of scaffolding, even though those customers had not leased the scaffolding from TP. With its scaffolding lessees, TP billed the charge for erecting separately, but on the same invoice as the charge for leasing the scaffolding.
- TP collected and remitted lease tax on the charges for the leasing of scaffolding, but did not collect lease tax on the charges for erecting the scaffolding.

RULING

- ALJ: "Alabama lease tax is levied against 'the *gross proceeds* derived by the lessor from the *lease or rental of tangible personal property*' Code of Ala. 1975, § 40-12-222(a). 'Gross proceeds' is defined as '[t]he *value proceeding or accruing* from the leasing or rental of *tangible personal property* ... without any deduction on account of the cost of the property so leased or rented, the cost of materials used, *labor* or service cost, interest paid, or any other expense whatsoever. . . .' Code of Ala. 1975, § 40-12-220(4)." Final Order p. 3 (emphasis added). ADOR claimed that

TP's charges for erecting scaffolding for those who leased from TP were only incidental to leasing of scaffolding, and thus were labor charges that could not be deducted from gross proceeds.

- ALJ noted that TP's erecting of scaffolding for its lessees was optional, and not incidental to leasing. Lessees had 3 choices, only one of which involved TP, and more than 80% of lessees chose to erect scaffolding other 2 ways. "The Taxpayer's fees for that optional service were independent of and not derived from the leasing of the scaffolding, and thus were not subject to lease tax." Final Order p. 4. "If one of the Taxpayer's lease customers hired a third party to erect the scaffolding, the third party's charge for the service would not be taxable. Applying the *Service Engraving* rationale, the Taxpayer's charge for performing the identical service also cannot be taxed." Final Order p. 7.
- ALJ also stated that fees were not "labor" costs that could not be deducted from gross proceeds. "Rather, the fees did not constitute gross proceeds subject to lease tax to begin with because they were not 'value proceeding or accruing from the rental' of the scaffolding. Section 40-12-220(4). The broad definition of 'gross proceeds' at §40-12-220(4) was intended to prevent a lessor from deducting from taxable receipts its various costs incurred in leasing tangible personal property." Final Order p. 8.
- ALJ ordered refund to TP.

12. *BOYD BROS. TRANSPORTATION, INC. v. ADOR*, ALD, S. 08-329 (Opinion and Prel. Order, 2/5/09)

conditional sales - trucks - installment payments - purchase option

SUMMARY

- TP provided drivers with trucks pursuant to 2 types of "lease-purchase" agreements. Drivers paid TP monthly amount over 3-5 years. With 1 type, drivers had option of returning trucks at end of term or purchasing for FMV. ADOR determined that those were leases. Lease tax was paid by TP, and these transactions were not in issue. Another type of agreement required drivers to pay FMV of trucks over term of agreement, and allowed drivers to purchase trucks at end of term for \$1. Seventy drivers entered such agreements, but only 4 completed them and purchased truck for \$1. TP did not transfer title until driver had completed agreement. ADOR took position that those agreements were conditional sales subject to sales tax.
- TP contended that transactions were not sales, because title never passed to drivers (except in 4 instances), citing §40-23-2(a)(5). That section defines "sale" as "every closed transaction constituting a sale. Provided,

however, a transaction shall not be closed or a sale completed until the time and place when and where title is transferred by the seller or seller's agent to the purchaser or purchaser's agent . . ."

RULING

- ALJ noted that transactions were either sales, in which case TP would be subject to sales tax, or leases, in which case TP would be subject to lease tax, unless statute of limitations had expired. "The transactions in issue constituted conditional sales pursuant to the above authorities. The Taxpayer was in substance selling the trucks to the drivers at fair market value over time. In *Lawson State, supra*, the Alabama Supreme Court stated that 'the right . . . to purchase the equipment for a mere \$1.00 at the termination of the lease constitutes an option to purchase at a 'nominal consideration,' and hence, the arrangement between those two parties is no mere bailment lease, but is instead a disguised conditional sale secured by a security agreement.' *Lawson State*, 529 So.2d at 929." Final Order p. 6.
- As to title issue, ALJ stated that fact that legal title did not pass to drivers in those situations where drivers defaulted did not change substance of transactions, *i.e.*, that transactions were conditional sales. "Although a sale is not technically closed until title to the subject property is transferred, any sale proceeds paid by the buyer to the seller before transfer of title clearly constitute taxable gross receipts derived from the sale." Final Order p. 7.
- TP also argued that, if transactions were sales, it was not subject to sales tax, because sales were "casual." ALJ disagreed. "The Taxpayer routinely sold the trucks in issue to its drivers, "with the object of gain, profit, benefit, or advantage. . . ." The lease purchase agreements, including the \$1.00 purchase transactions, were a regular and integral part of the Taxpayer's overall business scheme." Final Order p. 9. TP further argued that sales were casual, because it did not have a retail sales tax license with the ADOR. ALJ stated that failure to attain such a license could not relieve TP of liability.
- TP appealed to circuit court in Barbour County.

13. *GREAT AMERICAN INSURANCE COMPANY v. ADOR*, ALD, S. 08-533 (Final Order, 12/1/08)

auto dealers - bonds - sales tax - default

SUMMARY

- ADOR filed claims with insurance company for payment on \$10,000 bonds issued by company on behalf of automobile dealers, pursuant to § 40-12-398. Claims resulted from sales-tax assessments that were not collected by ADOR from auto dealers. Section 40-12-398 provides that the bond "shall be conditioned that the motor vehicle dealer . . . shall comply with the conditions of any contract made by such dealer in connection with the sale or exchange of any motor vehicle and shall not violate any of the provisions of law relating to the conduct of the business for which he is licensed." Section 40-12-398. That statute further provides that the bond "shall be payable to the commissioner (of revenue). . . , and shall be in favor of any person who shall recover any judgment for any loss as a result of any violation of the conditions herein above contained."
- Insurance company argued that ADOR was not a "person" within terms of statute, and that statute was not meant to protect ADOR from unpaid sales tax. According to company, if bonds could be claimed by ADOR for unpaid sales tax, then there would be no coverage in place if auto dealer defrauded a customer.

RULING

- ALJ ruled that ADOR was a "person," by being an "entity" within definition of "person" in § 40-1-1(8). ALJ also ruled that bonds could be claimed for unpaid sales tax, because such is a violation of law, as contemplated by § 40-12-398. Company did not appeal.

14. *RICHEY'S BARBECUE, A PARTNERSHIP, AND ITS PARTNERS v. ADOR, ALD*, S. 08-156 (Final Order, 9/11/08)

sales tax - partnerships - individual liability

SUMMARY

- ADOR claimed that a partner was liable for partnership's unpaid sales tax, because he signed sales-tax application. Partner introduced dissolution agreement at hearing, showing that he was no longer a partner after June 2004.

RULING

- ALJ stated: "The Administrative Law Division has previously held that a partner is only liable for the taxes of a partnership that accrue while the

individual is a partner. An individual partner is not liable for the debts of a partnership that accrue after the individual withdraws from and is no longer active in the partnership. See, *Best Deal Mobile Home Sales v. State of Alabama*, S. 01-551 (Admin. Law Div. 12/21/2004)." ALJ ruled that partner's name should be removed from final assessment.

15. *SUTTLES TRUCK LEASING, INC., AND SUTTLES TRUCK LEASING, LLC v. ADOR*, ALD, S. 07-503 and S. 07-504 (Opinion and Preliminary Order, 7/22/08)

use tax - truck trailers - use outside Alabama

SUMMARY

- TPs were in long-haul trucking business throughout North America - TPs had 24 terminals; 2 in AL (Demopolis and Creola).
- Corporation purchased used trailers from non-dealers outside AL, and purchased new trailers from dealer outside AL.
- Both TPs purchased trucks in AL that were prepared for use in AL, but then assigned outside AL.

RULING

- ALJ ruled that trailers purchased from non-dealers and dealer outside AL were not subject to use tax, because trailers were first used outside of AL, citing *Boyd Bros Transportation*.
- ALJ ruled that trucks purchased in AL and assigned out of state were not subject to use tax, even though no drive-out certificates were provided, because first substantial use occurred outside AL.
- TPs also argued that Town of Creola use-tax ordinance was unconstitutional, because it failed to provide a credit for local tax paid on the property in another state.
- ALJ noted, however, that Article V.1. of Alabama's Multistate Tax Compact requires localities to allow such a credit - therefore, potential constitutional problem with ordinance was avoided.

16. *CHARLES LITTLE KIDDIE COLLEGE SCHOOL, III, INC. v. ADOR*, ALD, S. 07-710 (Final Order, 6/27/08)

sales tax - exemption certificate

SUMMARY

- Petitioner operates daycare and pre-kindergarten program - receives state

- grant for pre-K – must comply with state guidelines for pre-K programs.
- “Private school” exemption includes “kindergartens”, but does not include day care centers.

RULING

- ALJ noted that a business may operate a taxable daycare and a tax-exempt kindergarten at same location.
- ALJ also saw no difference between K and pre-K, and he directed ADOR to issue exemption certificate.

17. ALICE H. SMITH v. ADOR, ALD, INC. 08-142 (Final Order, 8/13/08)

wife’s payment of deceased husband’s income tax – refund petition – marital home

SUMMARY

- H filed 2006 AL return on 4/11/07, but failed to pay tax. H died on 4/12/07.
- W paid tax, because accountant said ADOR’s lien attached to jointly-owned marital home. She filed for refund.
- Issue of first impression: Whether person who voluntary pays another’s tax liability is entitled to a refund.

RULING

- ALJ first ruled that W was a “TP” within § 40-2A-3(23), which defines TP as “any person that may be affected by any act or refusal to act by the department.”
- ALJ ruled, however, that W was not entitled to refund, because payment was not an “overpayment of tax or other amount erroneously paid to the department.” § 40-2A-7(c)(1)
- ALJ noted that the amount paid by W was the amount owed by H, so there was no overpayment.
- ALJ also stated that W paid tax based on misunderstanding of law (regarding her mistaken belief that lien attached to marital home), and that voluntary payment was non-refundable according to AL case law.

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