

SPIRIT HALLOWEEN SUPERSTORES, §
LLC & SPENCER GIFTS, LLC
6826 BLACK HORSE PIKE §
EGG HARBOR TWP., NJ 08234-4197, §

Taxpayers, §

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE. §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. BPT. 12-280

FINAL ORDER

This appeal involves a disputed refund of 2006 business privilege tax claimed by Spirit Halloween Superstores, LLC (“Spirit”), and disputed refunds of 2007 and 2008 business privilege tax claimed by Spencer Gifts, LLC (“Spencer”).

The Department’s Answer indicated that Spirit filed its 2006 business privilege return on July 17, 2006 and reported tax due of \$100. It erroneously remitted \$27,200 with the return. The Department apparently took no action concerning the overpayment.

Spencer requested a refund of \$2,149 on its 2007 Alabama business privilege return.¹ The Department issued a reduced 2007 refund of \$1,851.46 to Spencer on March 3, 2010. The Department indicates that the 2007 refund check is in unclaimed property, i.e., is being held as unclaimed property in the Alabama Treasurer’s office. The Department also indicates that a 2008 business privilege refund check issued to Spencer for \$3,215 is also being held as unclaimed property by the Treasurer. It states that Spencer should contact the Treasurer’s office at 888-844-8400 and claim the checks.

¹ As indicated in the Department’s Answer, the return was for the fiscal year ending January 31, 2007. The Taxpayers referred to that return as Spencer’s 2006 return in their appeal to the Administrative Law Division.

Concerning the 2006 overpayment by Spirit, the Department claims that the amount cannot be refunded because Spirit failed to appeal the denied refund within two years. Specifically, the Department contends that the 2006 refund was deemed denied on January 17, 2007, six months after Spirit filed its 2006 return and remitted the overpayment to the Department, see Code of Ala. 1975, §40-2A-7(c)(3). The Department argues that Spirit had two years from that deemed denial date to appeal, and that because it failed to do so, the refund cannot now be issued.

I agree that Spirit's 2006 overpayment cannot be refunded, but not for the technical reason cited by the Department.

As indicated, Spirit reported tax due of \$100 on its 2006 business privilege tax return. Unfortunately, Spirit claims that due to a clerical error, a check for \$27,200 was remitted with the return. There is no indication that Spirit petitioned for or otherwise claimed a refund of the \$27,100 overpaid until it appealed to the Administrative Law Division in February 2012. Because Spirit never petitioned to the Department for a refund of the amount overpaid, there could be no denied refund, deemed or otherwise from which Spirit could appeal to the Administrative Law Division.

Spirit had three years from when its 2006 return was filed to petition for a refund of the amount overpaid with the return. It failed to do so. A refund of the overpayment is thus barred by the statute of limitations at §40-2A-7(c)(2)a.

The Department's denial of Spirit's claim for a refund of its overpaid 2006 business privilege tax is affirmed. Judgment is entered accordingly. Spencer should contact the Alabama Treasurer's office in due course concerning its 2007 and 2008 refund checks.

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

Entered July 11, 2012.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

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