



FILED
GA. TAX TRIBUNAL

JUL 13 2015

IN THE GEORGIA TAX TRIBUNAL
STATE OF GEORGIA

H. ALAN ROSENBERG,

Petitioner,

v.

LYNNETTE T. RILEY,
in her Official Capacity as
Commissioner of the GEORGIA
DEPARTMENT OF REVENUE,

Respondent.

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Yvonne Bouras
Yvonne Bouras
Tax Tribunal Administrator

ADMINISTRATIVE APPEAL

FILE NO. 1414626

FINAL CONSENT ORDER

This matter having come before the Tribunal pursuant to the consent of all parties in this matter, by and through their respective counsel, requesting entry of this Final Consent Order; and

WHEREAS, the Petitioner filed an original 2008 Georgia Individual Income Tax Return Form 500 on September 14, 2009 and paid the reported tax;

WHEREAS, on September 12, 2012, Petitioner filed an amended 2008 Georgia Individual Income Tax Return Form 500X and claimed a total tax refund in the amount of \$41,293, plus statutory interest;

WHEREAS, the amended return and refund claim were based on certain income tax credits and adjustments to Petitioner's pass-through income from his interests in National Distributing Company, Inc. ("National Distributing Company") and NDC Leasing, LLC ("NDC Leasing");

WHEREAS, the income tax credits that Petitioner claimed on his amended 2008 return yielded a refund claim in the amount of \$13,676 for tax year 2008 and derived from an amended Georgia income tax return filed by National Distributing Company to claim Georgia jobs tax credits that the company did not claim on its original Georgia income tax return for the 2008 tax year;

WHEREAS, the adjustments to income that Petitioner claimed pursuant to O.C.G.A. § 48-7-27(d)(1) yielded a refund claim in the amount of \$27,617 for tax year 2008. That portion of Petitioner’s refund claim was derived from franchise taxes paid to Texas and the District of Columbia by Republic National Distributing Company, LLC (“RNDC”)—an entity in which Petitioner held an indirect ownership interest via his interests in National Distributing Company and NDC Leasing—with respect to the 2008 tax year (hereinafter, “Texas Franchise Tax” and “District of Columbia Franchise Tax”);

WHEREAS, on September 12, 2013, Respondent denied Petitioner’s refund claim;

WHEREAS, on October 17, 2013, Petitioner timely filed a Petition in this Tribunal which appealed the refund claim denial;

WHEREAS, on June 20, 2014, the parties filed a Joint Stipulation of Facts and filed cross-motions for summary judgment only on the issue of whether Petitioner may adjust his federal adjusted gross income under O.C.G.A. § 48-7-27(d)(1) for pass-through income received from an entity (*i.e.*, RNDC) that was subject to the Texas Franchise Tax;

WHEREAS, on November 25, 2014, this Tribunal entered an Order finding that Petitioner may adjust his federal adjusted gross income under O.C.G.A. § 48-7-27(d)(1) for the pass-through income received from RNDC that was subject to the Texas Franchise Tax;

WHEREAS, the parties have come to an agreement and resolution regarding the remaining issues in this case;

NOW, THEREFORE, with the consent of the undersigned parties, the Tribunal issues the following order:

1.

The Tribunal hereby adopts the Joint Stipulation of Facts and attachments thereto as the factual record in this case.

2.

The Tribunal hereby adopts its decision dated November 25, 2014—in which it held that Petitioner may make an adjustment to his federal adjusted gross income under O.C.G.A. § 48-7-27(d)(1) for the pass-through income received from RNDC that was subject to the Texas Franchise Tax—as the decision of the Tribunal on this issue.

3.

The parties agree and stipulate that Petitioner may make an adjustment to his federal adjusted gross income under O.C.G.A. § 48-7-27(d)(1) for the pass-through income received from RNDC that was subject to the District of Columbia Franchise Tax.

4.

The parties agree and stipulate that the method to calculate the Petitioner's adjustments for both the Texas Franchise Tax and the District of Columbia Franchise Tax under O.C.G.A. § 48-7-27(d)(1) is as follows:

- (a) For tax year 2008, determine the Georgia taxable net income before apportionment of RNDC (such Georgia taxable net income shall include, without limitation, income, gains, losses, and deductions from RNDC which are separately reported and included on the Petitioner's return pursuant to IRC § 704);

- (b) Multiply that amount by RNDC's respective apportionment ratios for tax year 2008 in (i) Texas¹ and (ii) the District of Columbia; then
- (c) Multiply each of those amounts by Petitioner's distributive share percentage from his indirect ownership interests in RNDC.²

5.

Employing the method of calculation set forth in paragraph 4, Petitioner is entitled to a total adjustment of \$446,402 under O.C.G.A. § 48-7-27(d)(1). That adjustment is comprised of an adjustment in the amount of \$412,682 attributable to the Texas Franchise Tax and an adjustment in the amount of \$33,720 attributable to the District of Columbia Franchise Tax.

6.

The adjustments described in paragraphs 4 and 5 of this Order yield a refund in the amount of \$26,784 for the adjustments under O.C.G.A. § 48-7-27(d)(1).

7.

The parties agree and stipulate that Petitioner's refund claim for his portion of the job tax credits of National Distributing Company is granted, except for certain bonus job credits in the amount of \$1,304 that were claimed for tax year 2008 pursuant to O.C.G.A. §§ 48-7-40 and 36-62-5.1. The Petitioner is therefore granted a refund with respect to the claimed job tax credits in the amount of \$12,372 for tax year 2008.

8.

As set forth in detail in paragraphs 4, 5, 6, and 7, the total amount of taxes to be refunded to Petitioner for tax year 2008 is the amount of \$39,156. The Department shall add statutory

¹ For purposes of the Texas Franchise Tax, this figure would have been reported on the 2009 Texas Franchise Tax Report.

² For purposes of this computation, the Petitioner must use the percentages that were used for federal income tax purposes.

interest to this amount pursuant to O.C.G.A. § 48-2-35(a), except that no interest shall be paid with respect to that portion of refunded tax from the failure to claim income tax credits pursuant to O.C.G.A. § 48-2-35(b).

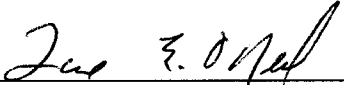
9.

The parties agree and stipulate that neither party shall file any appeal of this Order or the Court's decision dated November 25, 2014.

10.

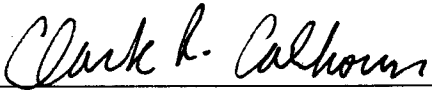
Because all issues have been disposed of in this case, the Clerk is directed to close this case.

SO ORDERED this 13 day of July, 2015.



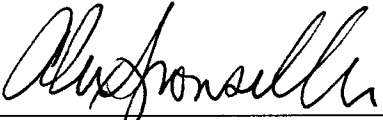
HONORABLE LAWRENCE E. O'NEAL, JR.
Chief Judge, Georgia Tax Tribunal

Consented to by:

 *w/permission of*

ALSTON & BIRD, LLP
Mary T. Benton, Esq.
Clark R. Calhoun, Esq.

On behalf of Petitioner H. Alan Rosenberg



ALEX F. SPONSELLER
Senior Assistant Attorney General

On behalf of Respondent Georgia Department of Revenue

CERTIFICATE OF SERVICE

I do hereby certify that I have this date served a copy of the foregoing FINAL CONSENT ORDER upon:

Mary T. Benton, Esq.
Clark R. Calhoun, Esq.
Alston & Bird, LLP
1201 West Peachtree Street
Atlanta, Georgia 30309-3424

by placing the same into the United States mail with adequate, first-class postage placed thereon.

This 7th day of July, 2015.



ALEX F. SPONSELLER
Senior Assistant Attorney General