

AQUA DON UMOREN  
3712 Stafford Place  
Tuscaloosa, AL 35045,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 01-473

**ORDER DENYING  
TAXPAYER'S MOTION TO DISMISS  
AND SETTING HEARING**

This appeal involves final assessments of 1996 and 1997 Alabama income tax entered against the above Taxpayer. The Department entered the final assessments on June 19, 2001. The Taxpayer timely appealed on July 17, 2001 (postmark date).

As required by Code of Ala. 1975, ' 40-2A-9(c), the Administrative Law Division notified the Department's Legal Division of the appeal by notice dated July 18, 2001. The Department filed its Answer on August 29, 2001. The case was set for hearing on October 2, 2001, but was continued until November 6, 2001 at the request of the Taxpayer's representative.

On October 12, 2001, the Taxpayer's representative moved to have the final assessments dismissed because the Legal Division failed to timely file its Answer as required ' 40-2A-9(c). The Taxpayer's motion is denied for the reasons explained below.

Section 40-2A-9(c) requires the Legal Division to file an Answer within 30 days after being notified by the Administrative Law Division that an appeal has been filed. The administrative law judge is authorized to allow the legal division additional time, not to exceed 60 days, within which to file an answer.® The statute does not require that the Legal Division

must file a written request for additional time to file an Answer. Dept. Reg. 810-14-1-.24(2)(a)

elaborates on the statute, and reads as follows:

The Administrative Law Division shall notify the Legal Division that a notice of appeal has been filed, and the Legal Division must file an answer to the notice of appeal with the Administrative Law Division within thirty (30) days from receipt of such notice or as otherwise allowed by the Administrative Law Judge. The Administrative Law Judge may, for good cause, allow the Department up to sixty (60) days additional time to file an answer. Any request for additional time must be made in writing to the Administrative Law Division within the time allowed for filing an answer, with a copy to the taxpayer or the taxpayer's representative. The request must set out the specific reasons why additional time is necessary. Additional time to file an answer may also be granted, without a written request, at the discretion of the Administrative Law Judge.

The Administrative Law Division has ruled that if the Legal Division fails to file an Answer within the combined 90 days allowed by ' 40-2A-9(c), the taxpayer should be granted relief. *Sungard Business Systems, Inc. v. State of Alabama*, U. 94-310 (Admin. Law Div. 1/10/95); *Bishop-Parker Furniture Co., Inc. v. State of Alabama*, S. 93-252 (Admin. Law Div. 3/31/94).

However, the Administrative Law Division has also consistently denied a taxpayer's request for summary relief where the Legal Division filed its Answer after the initial 30 days had expired, but before the combined 90 day period had expired, even though the Department failed to request an extension within the initial 30 day period. *Compass Marketing, Inc. v. State of Alabama*, U. 96-481 (Admin. Law Div. 1/15/97); *Philip Morris, Inc. v. State of Alabama*, Misc. 96-456 (Admin. Law Div. 1/15/97); *Central Alabama Home Equipment Co., Inc. v. State of Alabama*, S. 93-367 (Admin. Law Div. 5/6/94). The Taxpayer's motion for relief in this case is likewise denied. Section 40-2A-9(c) and Reg. 810-14-1-.24(2)(a) both

give the administrative law judge the discretion to accept an Answer filed within 90 days, even though a written request for an extension was not filed.

I agree with the Taxpayer's attorney, however, that the Administrative Law Division's practice of allowing the Legal Division to file an Answer after the initial 30 days, without requesting an extension and giving a good reason why an extension is needed, is inappropriate. Certainly, in some cases the Legal Division will need a short extension of the 30 day Answer period due to unusual circumstances, the complexity of the case, or other good cause. But in such instances, the Legal Division should, as specified in Reg. 810-14-1-.24(2)(a), be required to request an extension in writing within the original 30 day Answer period, and state its reasons why an extension is needed. The administrative law judge should then exercise discretion and grant a reasonable extension, if appropriate. However, because the Legal Division has relied on the Administrative Law Division's prior policy of accepting an Answer within 90 days, even if an extension is not requested, the new policy will be applied prospectively only to appeals filed after this Order.

The Legal Division is notified that in the future, it should comply with Reg. 810-14-1-.24(2)(a) and request additional time to file an Answer in writing within the initial 30 day period. The request should state the reasons why additional time is needed. The Administrative Law Division retains discretion, however, to accept an Answer within the combined 90 day period for good cause, even if no extension request is filed.

A hearing is scheduled on the merits of this case for **9:30 a.m., January 3, 2002**, in Room 4118, Gordon Persons Building, 50 North Ripley, Montgomery, Alabama.

Entered November 6, 2001.