

STATE OF ALABAMA,
DEPARTMENT OF REVENUE,

vs.

BISHOP-PARKER FURNITURE CO. INC.
3035 East South Boulevard
Montgomery, AL 36120

Taxpayer.

§ STATE OF ALABAMA
DEPARTMENT OF REVENUE
§ ADMINISTRATIVE LAW DIVISION

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DOCKET NO. S. 93-252

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ORDER GRANTING RELIEF
TO TAXPAYER

The Taxpayer, Bishop-Parker Furniture Company, Inc., has moved to dismiss the assessments in issue in this case because the Revenue Department failed to timely file an Answer as required by Code of Ala. 1975, §40-2A-9(c). The motion is granted.

The facts are as follows:

The Department entered numerous State, county and city sales and use tax final assessments against the Taxpayer on May 7, 1993.

The Taxpayer timely appealed the final assessments to the Administrative Law Division within 30 days as required by Code of Ala. 1975, §40-2A-7(b)(5).

The Administrative Law Division, as required by §40-2A-9(c), notified the Department of the Taxpayer's appeal by letter dated June 11, 1993. The Department subsequently filed an Answer with the Administrative Law Division on December 28, 1993.

The case was set for hearing on February 24, 1994. However, the Taxpayer filed the motion in issue prior to the hearing on February 22, 1994. The motion claims that the final assessments should be dismissed because the Department failed to file an Answer within the time required in §40-2A-9(c). A Preliminary Order was

issued by the Administrative Law Division allowing the Department until March 11, 1994 to respond and show cause why the motion should not be granted. The Department subsequently responded on March 14, 1994.

Section 40-2A-9(c) was enacted as part of the Taxpayers' Bill of Rights and Uniform Revenue Procedures Act, effective October, 1992. Section 40-2A-9(c) requires the Department to file an Answer with the Administrative Law Division within 30 days after being notified that a taxpayer has appealed, or within 90 days at the discretion of the Administrative Law Judge. The section reads in pertinent part as follows:

The administrative law division shall notify the legal division of the department that an appeal has been filed, and the legal division shall be required to file a written answer with the administrative law division within thirty days from receipt of such notice. The answer shall state the facts and issues in dispute and the department's position relating thereto, however, the administrative law judge shall have discretion to require additional information from either the taxpayer or the department or to allow the legal division additional time, not to exceed sixty days, within which to file an answer.

The Department clearly failed to comply with the time requirements of §40-2A-9(c) in this case because the Department's Answer was not filed with the Administrative Law Division until December 28, 1993, or 200 days after being notified of the Taxpayer's appeal. The Department does not dispute that it timely received the notice of appeal sent by the Administrative Law Division to the Legal Division on June 11, 1993, nor has the

Department offered any reasonable explanation why the Answer was not timely filed.

Code of Ala. 1975, §40-2A-9(b) provides in relevant part as follows:

The administrative law judge shall be responsible for administration of the administrative law division and shall have authority to schedule and conduct hearings and decide all appeals properly filed with the administrative law division. The administrative law judge shall have discretion to dismiss any appeal for failure or refusal to comply with any department regulation or statute concerning appeals to the administrative law division, or the failure or refusal to comply with any preliminary order issued by the administrative law judge.

The Department argues that §40-2A-9(b) provides only that a taxpayer's appeal can be dismissed if a taxpayer fails to comply, but that the Administrative Law Judge does not have the authority to grant the relief sought by a taxpayer if the Department fails to comply. I disagree.

The cardinal rule of statutory construction is that a statute must be construed to fulfill the intent of the Legislature. Gulf Coast Media, Inc. v. The Mobile Press Register, Inc., 470 So.2d 1211. The purpose and object of the statute must be considered, and the plain language of the statute should not be followed when the practical consequences will lead to unjust results and is contrary to the purpose of the statute. Smith v. Alabama Medicaid Agency, 461 So.2d 817; Birmingham News Co. v. Patterson, 202 F. Supp 881. The plain-meaning rule of statutory construction should not be followed where the result is inconsistent with the intent of the statute. Bailey v. USX Corp., 850 F.2d 1506.

The clear intent of the Taxpayers' Bill of Rights and Uniform Revenue Procedures Act, of which §§40-2A-9(b) and (c) are a part, is to provide "equitable and uniform procedures for the operation of the department and for all taxpayers when dealing with the department." See Code of Ala. 1975, §40-2A-2(1). Certainly the Legislature did not intend nor would it be equitable to penalize a taxpayer for failing to comply with a statute or regulation concerning administrative appeals, but not hold the Department to the same standard.

The Legislature required the Department to answer within 30 days to protect taxpayers from undue delay by the Department. However, if a taxpayer cannot be granted relief when the Department fails to answer within the required 30 days, or at least within the additional 60 days allowed by §40-2A-9(c), then in practical effect the time limits imposed by that section would be meaningless. The Department could ignore the time requirements without penalty.

In light of the above, §40-2A-9(b) must be construed to allow the administrative law judge authority to grant relief to either party where the opposing party fails to comply with a statute, regulation or preliminary order concerning an appeal before the Administrative Law Division, either by dismissing the taxpayer's appeal if the taxpayer fails to comply, or by granting the relief sought by a taxpayer if the Department fails to comply. That legislative intent is recognized in Department Reg. 810-14-1-.24(3), which specifies that if either party fails to comply " . . . the Administrative Law Judge shall have discretion to dismiss the

appeal, grant all or part of the relief sought by the taxpayer, or take any other action appropriate under the circumstances."

I note for the record that the Administrative Law Division has ex mero motu dismissed several appeals because the taxpayer failed to comply with a preliminary order issued by the Administrative Law Judge. At least 10 other appeals have also been dismissed on motion by the Department during 1994 because the taxpayer failed by as little as one day to appeal a final assessment within 30 days as required by §40-2A-7(b)(5).

Section 40-2A-9(c) provides that the Administrative Law Judge shall have discretion to allow the Department an additional 60 days beyond the initial 30 days to file an Answer. By direct implication, the Administrative Law Judge is without discretion after the additional 60 day period has expired. Consequently, the relief sought by the Taxpayer in this case must be granted.

The above considered, the final assessments of State, county and city sales and use taxes in issue are dismissed. This Order Granting Relief To Taxpayer may be appealed to circuit court within 30 days as provided in Code of Ala. 1975, §§40-2A-9(b) and (g) and Department Reg. 810-14-1-.24.

Entered on March 31, 1994.

BILL THOMPSON
Chief Administrative Law Judge