

STATE OF ALABAMA,
DEPARTMENT OF REVENUE,

vs.

J. J. WILLIAMS
P. O. Box 220
Bridgeport, AL 35740,

Taxpayer.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. P. 93-369

ORDER DISMISSING APPEAL

The Department has moved to dismiss the Taxpayer's appeal because the Taxpayer failed to appeal the final assessment in issue within 30 days as required by Code of Ala. 1975, §40-2A-7(b)(5).

That section provides that if an appeal is not filed within the required 30 days, it shall be dismissed for lack of jurisdiction.

A hearing was conducted on the motion on May 11, 1994. Teddy Lane Carte appeared for the Taxpayer. Assistant counsel Dan Schmaeling represented the Department.

The facts are undisputed.

The Department entered the final assessment in issue on September 14, 1993. A copy of the final assessment was mailed to the Taxpayer on that same day by certified mail to P. O. Box 220, Bridgeport, Alabama 35740. The Postal Service attempted delivery of the letter to the Taxpayer on September 15 and September 27, 1993. However, the Taxpayer failed to claim the letter, which was subsequently returned "unclaimed" to the Revenue Department Collections Division on October 29, 1993. The Department remailed

the final assessment by first class mail to the same address on November 1, 1993. The Taxpayer subsequently appealed to the Administrative Law Division on November 30, 1993.

The Taxpayer concedes that his appeal was not timely filed within 30 days. Rather, the Taxpayer argues that the assessment was not properly served because it was mailed to the address of Williams Oil Company and not to his personal address. The Taxpayer also argues that under the circumstances the assessment should have been served by personal service to ensure receipt by the Taxpayer.

Code of Ala. 1975, §40-2A-7(b)(4)c. requires the Department to serve a final assessment of over \$500.00 by certified mail to the taxpayer's last known address. The final assessment may also be served by personal delivery "at the option of the Department".

The Department served the final assessment in issue to P. O. Box 220, Bridgeport, Alabama. That address is the mailing address of the Taxpayer's business, Williams Oil Company, and several other related businesses. However, John Hughes, an officer of Williams Oil Company and the Taxpayer's son-in-law, stated at the May 11, 1994 hearing that the Taxpayer receives all of his personal mail at P. O. Box 220, Bridgeport, Alabama. The Department's income tax records also show that the Taxpayer uses P. O. Box 220, Bridgeport, Alabama as his individual address on his Alabama income tax returns.

The above considered, I must hold that the Department properly served the final assessment to the Taxpayer's last known and correct mailing address, P. O. Box 220, Bridgeport, Alabama. The fact that he failed to claim the certified mail notice cannot excuse the Taxpayer's failure to appeal within the required 30 days. See, Williams v. State Dept. of Revenue, 578 So.2d 1345.

The Department is authorized to serve a final assessment by personal delivery. However, the option is with the Department, and the Department's failure to deliver the final assessment in issue by personal service does not establish a lack of due process.

The above considered, the Department's motion to dismiss must be granted. The Taxpayer's appeal is accordingly dismissed for lack of jurisdiction.

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

Entered on May 18, 1994.

BILL THOMPSON
Chief Administrative Law Judge