

STATE OF ALABAMA,
DEPARTMENT OF REVENUE,

vs.

S. D. WARREN COMPANY
Scott Plaza One
Philadelphia, PA 19113,

Taxpayer.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. F. 94-226

ORDER DENYING
DEPARTMENT'S MOTION TO DISMISS

The Department entered the final assessment in issue in this case on March 31, 1994. The Taxpayer's attorney telephoned the Administrative Law Division on April 29, 1994 and was informed by the Chief Administrative Law Judge that a notice of appeal could be filed with the Administrative Law Division by facsimile transmission ("fax"). The Taxpayer thereafter filed a notice of appeal with the Administrative Law Division by fax on April 29, 1994, within the 30 days allowed for appealing the final assessment in issue pursuant to Code of Ala. 1975, ' 40-2A-7(b)(5).

The Department has moved to dismiss the Taxpayer's appeal because the faxed notice of appeal did not constitute a proper "filing" of the appeal with the Administrative Law Division, citing Ex parte Tuck, 622 So.2d 929. The Department's motion is denied for the reasons stated below.

The issue in Ex parte Tuck was whether the sending of a faxed copy of a notice of appeal from district court to circuit court constituted a filing pursuant to the Alabama Rules of Civil Procedure ("ARCP"). The Supreme Court allowed the specific

faxed notice of appeal in issue in Ex parte Tuck as timely filed. However, the Court also held that after July 31, 1993 "we will not recognize the facsimile transmissions as filings, within the meaning of our rules of court or the statutes of this state, except as statutes or rules may specifically authorize 'filing' by facsimile transmission."

It is unclear whether Ex parte Tuck was intended to apply to all filings required by statute (including appeals to the Administrative Law Division), or only to appeals governed by the ARCP. The language used by the Court ("rules of court or the statutes of this state") indicates that the Court probably intended it to apply to all filings.

However, the facts in this case require that the Taxpayer's faxed notice of appeal must be accepted as a timely filed notice of appeal.

The Revenue Department cannot be estopped from assessing and collecting tax that is properly owed. Community Action Agency of Huntsville, Madison County, Inc. v. State, 406 So.2d 890. However, the Department may be estopped from denying a taxpayer a hearing or the right to appeal where the taxpayer's failure to timely request a hearing or appeal was due to erroneous information given by a Department employee. Ex parte Four Seasons, Ltd., 450 So.2d 110. The Supreme Court stated in Four Seasons, at p. 111, as follows:

The doctrine of estoppel has not been applied against the state acting in its governmental capacity in the assessment and collection of taxes. Community Action Agency of Huntsville, Madison County, Inc. v. State, 406 So.2d 890 (Ala. 1981); State v. Maddox Tractor and Equipment Company, 260 Ala. 136, 69 So.2d 426. However, the petitioners in this case are not seeking to estop the state from assessing and collecting the

tax owed. Rather, they are attempting to preserve their right to a hearing in a state court, where the untimeliness of the filing of their appeal was caused by misinformation furnished by the state's officer and relied upon by the petitioners to their detriment.

Four Seasons is directly on point in this case. The Taxpayer's attorney contacted the Administrative Law Division and was informed that a notice of appeal could be filed with the Administrative Law Division by fax. The Taxpayer thereafter faxed its notice of appeal to the Administrative Law Division within the 30 days allowed for appeal. Based on the reasoning in Four Seasons, the Department is estopped from not accepting the Taxpayer's faxed notice of appeal as having been timely filed.

The Department's motion to dismiss is denied. The Legal Division is directed to file an Answer with the Administrative Law Division within 30 days of this Order.

Entered on July 18, 1994.

BILL THOMPSON
Chief Administrative Law Judge