

STATE OF ALABAMA §
DEPARTMENT OF REVENUE, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

vs.

§
SUNGARD BUSINESS SYSTEMS, INC. §
d/b/a Daytron Corporation §
210 Automation Way §
Irondale, AL 35283, §

DOCKET NO. U. 94-310

Taxpayer. §

ORDER DISMISSING FINAL ASSESSMENT

The Department entered a final assessment of State use tax against Sungard Business Systems, Inc. ("Taxpayer") on June 24, 1994. The Taxpayer timely appealed to the Administrative Law Division. The Administrative Law Division notified the Legal Division of the appeal by letter ("Notification to Legal Division") dated August 1, 1994. The Department filed its answer with the Administrative Law Division on November 21, 1994.

The Taxpayer has moved to dismiss the final assessment in issue because the Department failed to timely file its answer within 90 days as required by Code of Ala. 1975, §40-2A-9(c). The motion is granted for the reasons stated below.

Code of Ala. 1975, §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 of a taxpayer's appeal. The Department may be allowed an additional 60 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 30 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 60 days, within which to file an answer.

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 does not dispute that it failed to file its answer in this case within 90 days as required by §40-2A-9(c). Rather, the Department argues that even though its answer was late, §40-2A-9(b) does not give the Administrative Law Judge authority or jurisdiction to dismiss the final assessment in issue. I disagree.

This same issue was decided in a prior Administrative Law Division case, State v. Bishop-Parker Furniture Company, Docket No. S. 93-252, decided March 31, 1994. In that case, the Department failed to file its answer within the required 90 days. As in this case, the Department conceded that the answer had not been timely

filed, but nonetheless argued that §40-2A-9(b) did not give the Administrative Law Judge authority to dismiss the final assessments in issue. The Department's argument was rejected, as follows:

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."

The above logic is equally applicable in this case. If a taxpayer cannot be granted relief under §40-2A-9(b), then in practical effect the time limits imposed by §40-2A-9(c) would be meaningless. The Department could ignore the statutory time requirements without penalty. Clearly, that was not the intent of the Legislature. As noted in Bishop-Parker, numerous taxpayer appeals have been dismissed on motion by the Department because the taxpayer failed to timely file a notice of appeal. The intent of the Legislature and fairness requires that the Department must be held to the same standard. The above considered, the use tax final assessment in issue is 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 40-2A-9(g), and Department Reg. 810-14-1-.24.

Entered on January 10, 1995.

BILL THOMPSON
Chief Administrative Law Judge