

CENTURY COIN AND STAMP CO., INC. § STATE OF ALABAMA
800 North 19th Street DEPARTMENT OF REVENUE
Bessemer, AL 35020, § ADMINISTRATIVE LAW DIVISION
Taxpayer, §
vs. §
STATE OF ALABAMA § DOCKET NO. INC. 94-469
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed corporate income tax against Century Coin and Stamp Company, Inc. ("Taxpayer") for the fiscal years ending March 31, 1990 through March 31, 1994. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on March 14, 1995. The Taxpayer's representative/accountant was notified of the hearing by certified mail on January 11, 1995, but failed to appear. Assistant counsel Claude Patton represented the Department.

The Taxpayer failed to file Alabama corporate income tax returns for the years in issue. The Department notified the Taxpayer by letters dated July 14, 1993 and December 29, 1993 that returns should be filed. The Taxpayer failed to respond. The Department subsequently entered preliminary assessments against the Taxpayer on August 8, 1994. The preliminary assessments were based on information contained in the Taxpayer's Alabama shares tax returns filed for the subject years.

The Taxpayer's accountant contacted the Department after entry of the preliminary assessments and requested additional time to

file returns for the subject years. However, no returns were filed, and consequently the Department entered the final assessments in issue on November 22, 1994.

The Taxpayer's accountant appealed the final assessments to the Administrative Law Division by letter dated December 15, 1994.

The appeal letter states that the accountant was completing the returns and that all returns should be completed within 30 days.

However, no returns were received by the Department prior to the March 15, 1995 hearing date, nor has the Taxpayer's representative contacted the Department or the Administrative Law Division concerning the returns or the assessments in issue.

If a taxpayer fails to file a return, the Department is authorized to calculate the correct tax due based on the best information obtainable. Code of Ala. 1975, §40-2A-7(b)(1)a. The Department thus properly calculated the final assessments in issue based on the best information available, the information contained in the Taxpayer's corporate shares tax returns.

The final assessments in issue are also prima facie correct, and the burden is on the taxpayer to prove that the assessments are incorrect. Code of Ala. 1975, §40-2A-7(b)(5)c. The Taxpayer in this case has failed to present any evidence whatsoever showing that the assessments are incorrect. Accordingly, the final assessments are due to be affirmed.

In addition, the frivolous appeal penalty levied by Code of

Ala. 1975, §40-2A-11(f) must also be applied in this case.

The Taxpayer failed to timely file the returns in issue. The Department requested the Taxpayer to file returns on several occasions, but the Taxpayer failed to respond.

The Taxpayer's accountant requested additional time after entry of the preliminary assessments in which to file the returns.

The additional time was allowed, yet the Taxpayer still failed to file the returns.

Finally, after the final assessments were entered, the Taxpayer appealed by letter dated December 15, 1994. However, the only reason stated in the appeal letter is that the Taxpayer needed more time to file the returns.

The Taxpayer does not dispute the returns are due and has offered no reason why the returns have not been filed.

Section 40-2A-11(f) levies a "frivolous appeal penalty" if an appeal is determined to be frivolous or primarily for the purpose of delay or to impede collection of any tax. The penalty is \$250.00 or 25% of the tax in question, whichever is greater. I can only conclude from the evidence in issue that the Taxpayer's appeal in this case was filed for the purpose of delay or to avoid collection of the tax in question. The Taxpayer has offered no other reasonable explanation as to why the returns in issue have not been filed. Consequently, a 25% frivolous appeal penalty should be added to the final assessments as provided by §40-2A-

11(f).

The above considered, judgment is entered against the Taxpayer for 1990 corporate income tax, penalty and interest in the amount of \$19,798.66 (assessment - \$15,838.93 plus 25% penalty \$3,959.73), 1991 corporate income tax, penalty and interest in the amount of \$18,563.69 (assessment - \$14,850.95 plus 25% penalty \$3,712.74), 1992 corporate tax, penalty and interest in the amount of \$17,495.60 (assessment - \$13,996.48 plus 25% penalty \$3,499.12), 1993 corporate income tax, penalty and interest in the amount of \$15,745.65 (assessment - \$12,596.52 plus 25% penalty \$3,149.13), and 1994 corporate income tax, penalty and interest in the amount of \$13,571.34 (assessment - \$10,857.07 plus 25% penalty \$2,714.27).

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

Entered on March 23, 1995.

BILL THOMPSON
Chief Administrative Law Judge