

BOBBY H. & NANCY T. ADAMS
Post Office Box 1284
Dothan, AL 36302,

Taxpayers,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 99-323

ORDER DENYING
DEPARTMENT-S MOTION TO AMEND ORDER

This case involved a disputed final assessment of 1997 income tax. The Taxpayers= 1996 Alabama income tax return showed an overpayment of \$859. The Taxpayers requested that \$440 of that amount be carried over to their 1997 liability, which left a refund due of \$419. However, instead of issuing the Taxpayers a \$419 refund, the Department refunded the entire \$859.

Although they received a refund of the entire \$859 overpaid in 1996, the Taxpayers also claimed a credit of \$440 on their 1997 return for tax overpaid in 1996. The Department disallowed the credit and entered the final assessment in issue. The Taxpayers=CPA, apparently unaware that the Taxpayers had received a full refund of 1996 taxes, appealed.

The Department-s Legal Division explained in its Answer why the final assessment had been entered. The Administrative Law Division forwarded the Answer to the Taxpayers=representative with a Preliminary Order dated August 2, 1999. The Preliminary Order stated in part - AThe Taxpayers=representative should notify the Administrative Law Division by August 20, 1999 if he wishes to pursue this appeal. If not, the appeal will be dismissed.@

The Taxpayers=representative failed to respond by the August 20, 1999 deadline. The Administrative Law Division consequently entered a Final Order on October 21, 1999. Unfortunately, instead of dismissing the Taxpayers= appeal and allowing the final assessment to stand, the Final Order mistakenly dismissed the final assessment.

The Department filed a Motion to Amend Previous Order on April 28, 2000. The motion claims that the October 21 Final Order should be amended to show that the final assessment was affirmed. The motion must be denied.

The only methods by which a Final Order issued by the Administrative Law Division may be changed, other than by appeal to circuit court, is by application for rehearing filed within 15 days, Code of Ala. 1975, ' 40-2A-9(f), or by the Administrative Law Division amending the Final Order *ex mero moto* before the 30 day appeal period expires. The Department failed to file its motion within 15 days from the Final Order. The Administrative Law Division also failed to discover its mistake and amend the Final Order within 30 days. Consequently, the Administrative Law Division is without jurisdiction to alter the Final Order, which has the same force and effect as a final order issued by a circuit court in Alabama. Code of Ala. 1975, ' 40-2A-9(e).

Rule 60(a) A.R.C.P. allows a circuit court to correct a clerical mistake at any time. Rule 60(b) A.R.C.P. also allows a circuit court to relieve a party from a final order if the final order includes a mistake. However, the Rules of Civil Procedure do not apply in hearings before the Administrative Law Division. In any case, Rule 60(a) would not apply because the mistake in issue was substantive, not clerical. Rule 60(b) also would not apply because a motion to correct a mistake under Rule 60(b) must be made within a

reasonable time, not to exceed four months. The Department's motion was filed more than six months after the October 21, 1999 Final Order was entered.

The Department cites Marengo County v. Barley, 96 So. 730 (Ala. 1923), as authority for the Administrative Law Division to amend the Final Order. I disagree. The above case holds only that a county commissioner's court may correct the minutes of its meeting to show the truth of what occurred. That rule of law does not apply to the situation in issue.

The Department's motion is denied. However, the Department is authorized to enter another assessment for the 1997 tax due, even though a final assessment was previously entered for that year. Code of Ala. 1975, '40-2A-7(2)(j).¹ The statute of

¹Section 40-2A-7(2)(j) was included in the 1992 Uniform Revenue Procedures Act to allow the Department to enter a second final assessment if the Department discovers after entry of a final assessment that additional tax not included in the final assessment is owed. The broad language of '40-2A-7(2)(j) also allows the Department to enter a second final assessment based on the same income or other taxable measure on which the first final assessment was entered. However, if the first final assessment was appealed, and the case was decided on the merits, the Department would be barred from entering a second final assessment on the same income or taxable measure by the doctrine of res judicata. See generally, Croft v. Pate, 585 So.2d 799 (1991); M.O. Carroll-Newton Co. v. State of

limitations for entry of an assessment has not expired because the Department is generally allowed three years from the due date of the return to assess additional tax due. The Department thus has until April 15, 2001 to reassess the Taxpayers for 1997.

Entered May 10, 2000.

BILL THOMPSON
Chief Administrative Law Judge

Alabama, Misc. 99-314 (Admin. Law Div. 11/12/99). Res judicata does not apply in this case because the first final assessment that was the subject of the appeal was not decided on the merits.