

GARY N. & PEGGY M. DRUMMOND, et al

Taxpayers,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 99-455

PRELIMINARY ORDER
DENYING TAXPAYERS' MOTION TO COMPEL

The Taxpayers requested information from the Department concerning (1) the revenue collected from Alabama S corporations in 1996, 1997, and 1998 from the taxes levied at Code of Ala. 1975, ' 40-18-161, 40-18-174, and 40-18-175, and (2) the number of Form 20S-s filed in 1998. The Department refused to provide the information. The Taxpayers filed a motion to compel.

The Taxpayers argue that the information is relevant to support their statutory construction argument that if the Coal Tax Credit is not allowed to be passed through to individual S corporation members, the credit would be meaningless. The information may be relevant to that argument.

However, while the rules of evidence applicable in circuit court apply in hearings before the Administrative Law Division, see Code of Ala. 1975, ' 40-2A-9(j), the discovery rules available in circuit court do not apply. AThe Uniform Revenue Procedures Act at Code of Ala. 1975, ' 40-2A-7 et seq., does not include a discovery provision for appeals before the Administrative Law Division.@ J.C. Penney Properties, Inc. & J.C. Penney Company, Inc. v. State of Alabama, F. 95-219 & F. 96-140 (Admin. Law Div. Third Preliminary Order 8/6/97). Because the Administrative Law Division does not have the authority to subpoena documents or testimony, or to otherwise compel either party to produce evidence, the Taxpayers' motion to compel is denied.

-2-

Entered March 1, 2000.

BILL THOMPSON
Chief Administrative Law Judge

BT:dr

cc: Jeff Patterson, Esq.
Bruce P. Ely, Esq.
Christopher Grissom, Esq.
Kim Herman (8J704821-9)