

SMOKER'S OUTLET #4 LLC AND ITS SOLE
MEMBER, RAIED ZIENNI
15317 HIGHWAY 11 N
COALING, AL 35453-2408,

STATE OF ALABAMA
ALABAMA TAX TRIBUNAL

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§

DOCKET NO. S. 16-721

Taxpayers,

§

v.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE.

**FINAL ORDER GRANTING REVENUE DEPARTMENT'S
MOTION TO DISMISS**

This case involves a final assessment of State sales tax entered against Smoker's Outlet #4 LLC ("Smoker's Outlet"), and its sole member, Raied Zienni (together "Taxpayers"). The assessment is for February through December 2010, and was entered on April 15, 2014. The Taxpayers appealed to the Tax Tribunal on July 15, 2016 (postmark date).

The Department has filed a motion to dismiss because the Taxpayers failed to timely appeal the final assessment within 30 days after the assessment was entered, as required by Code of Ala. 1975, §40-2A-7(b)(5)a.

The Taxpayers do not dispute that their appeal was not filed within 30 days. They argue, however, that the appeal should not be dismissed because the Department failed to mail the final assessment to the Taxpayers' last known address, as required by Code of Ala. 1975, §40-2A-7(b)(4)c.

The Department mailed the final assessment to Smoker's Outlet, 3320 Stillman Blvd., Tuscaloosa, AL 35401-2704. The Taxpayers contend that the assessment should have been mailed to 15317 Highway 11 N., Coaling, AL 35453, because that address was shown as the address on Smoker's Outlet's February 2014 Alabama sales tax return filed

with the Department. They argue that by putting the Coaling, Alabama address on the February 2014 return, that address became the entity's last known address, effective when the return was filed in March 2014, before the Department entered the final assessment in issue in April 2014. They thus contend that because the Department failed to mail the final assessment to the Coaling, Alabama address, the appeal filed in July 2016 must be accepted as timely. I disagree.

Smoker's Outlet applied to the Revenue Department for a sales tax license on January 20, 2010. The business location was identified on the application as 15317 Highway 11 North, Coaling, AL 35453. The mailing address was listed as 3320 Stillman Blvd., Tuscaloosa, AL 35401. The fact that Smoker's Outlet put its business location address on its February 2014 sales tax return could not have reasonably put the Department on notice that the entity's mailing address, as shown on its sales tax application, had changed. Smoker's Outlet also never otherwise notified the Department that it was changing its mailing address. Based on the application information, the Department was required to mail the final assessment to the Tuscaloosa, Alabama mailing address, not the Coaling, Alabama business location.

The 3320 Stillman Blvd., Tuscaloosa, AL address was also the address that Raied Zienni used in a prior 2013 appeal before the Revenue Department's Administrative Law Division, now the Tax Tribunal. See, *Raied Zienni, the Sole Member of Alabama's Wholesale LLC v. State of Alabama*, Docket Misc. 13-294 (Admin. Law Div. 2/7/2014). There is also evidence that the envelope in which the final assessment was mailed by certified mail to the Tuscaloosa address was signed for on April 18, 2014. Again, the Tuscaloosa address was a valid address for Raied Zienni concerning his 2013 appeal.

Consequently, it is assumed that Zienni or an employee or relative of his signed for the certified mail, which would have given Zienni actual notice of the final assessment. As stated in *Davidson v. State of Alabama*, Docket. P. 03-232 (Admin. Law Div. 8/5/2003):

The Department's obligation to notify a taxpayer of a final assessment is satisfied if the taxpayer receives actual notice in sufficient time to appeal. "Even if the Department fails to mail a final assessment to a taxpayer's last known address, the Department's obligation to timely notify a taxpayer of a final assessment is still satisfied if the taxpayer receives actual notice of the assessment." *Island Interiors*, S. 01-316 at 6, citing *McKay v. C.I.R.*, 886 F.2d 1237 (1989) and *Patman and Young Professional Corp.*, 55 F.3d 216 (1995).

Davidson at 6.

Because the Department properly mailed the final assessment in issue to the Taxpayers' last known address, and because the Taxpayers failed to appeal the final assessment to the Tax Tribunal within 30 days, the Tribunal is without jurisdiction to hear the appeal. The appeal is accordingly dismissed. The Taxpayers may, however, pay the final assessment in full and then petition for a refund. If the refund is denied, the Taxpayers may appeal to the Tax Tribunal or to circuit court pursuant to Code of Ala. 1975, §§40-2A-7(c)(5)a. or b., respectively.

This Final Order Dismissing Appeal may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2B-2(m).

Entered September 1, 2016.

BILL THOMPSON
Chief Tax Tribunal Judge

bt:dr

cc: David E. Avery, III, Esq.
Brad Howell (w/enc.)