

PARRIS PIZZA, INC.	§	STATE OF ALABAMA
DBA DOMINOS PIZZA		ALABAMA TAX TRIBUNAL
110 5 TH STREET E	§	
WARRIOR, AL 35180-1340,	§	DOCKET NO. S. 16-896
	§	
Taxpayer,	§	
	§	
v.	§	
	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

**FINAL ORDER ON TAXPAYER'S
APPLICATION FOR REHEARING**

This appeal involves a final assessment of local sales tax for September 2012 through August 2015 entered by the Alabama Department of Revenue against the above Taxpayer. The Tax Tribunal entered a Final Order Dismissing Appeal on August 24, 2016 because the Taxpayer failed to timely appeal the final assessment to the Tribunal within 30 days, as required by Code of Ala. 1975, §40-2A-7(b)(5)a. The Taxpayer applied for a rehearing.

The Revenue Department entered the final assessment in issue on June 10, 2016. The Department apparently produced at least two copies of the final assessment that are in evidence before the Tribunal, and that are substantively identical. Both final assessments show that the Taxpayer is Parris Pizza, Inc., DBA Domino's Pizza, 110 5th St. E., Warrior, AL 35180-1340, and both show the amount assessed to be \$79,329.83. The mailing addresses to which the final assessments were mailed are, however, different. One of the final assessments shows the mailing address of one of the Taxpayer's authorized representatives, Brad Howell, at the representative's correct address of 5299 Cottage Ln., Hoover, AL 35226-5047. The other final assessment shows the mailing

address of the Taxpayer, Parris Pizza, Inc., DBA Domino's Pizza, P.O. Box 220, Gardendale, AL 35071-0220.

A USPS tracking document submitted by the Department with its motion to dismiss shows that a Revenue Department certified mail letter with a tracking number ending in 0480 was mailed in Montgomery on June 10, 2016. It was delivered to a USPS facility in Birmingham, Alabama on June 11, 2016, and went out for delivery to the addressee, the Taxpayer, on June 12, 2016. The document further shows that the item was signed for by the addressee at 10:42 a.m. on June 18, 2016 in Gardendale, AL. The addressee as shown on the certified mail return receipt was Parris Pizza, Inc., DBA Domino's Pizza.

The Department also submitted documents showing that the final assessment was also separately mailed to the Taxpayer's two authorized representatives, Brad Howell and Taylor Meadows, on June 10, 2016. A USPS tracking document concerning the final assessment mailed to Brad Howell, with a tracking number ending in 0473, shows that it was mailed in Montgomery on June 10, 2016, and arrived at a USPS facility in Birmingham on June 11. The Postal Service delivered the letter to the addressee on June 13. The tracking document shows that on July 8, the letter was "unclaimed/max hold time expired." The assessment was sent back to Montgomery, and the Department remailed it to the addressee, Brad Howell, by first class mail on July 13, 2016.¹

The USPS tracking document concerning the final assessment mailed by certified mail to the Taxpayer's other authorized representative, Taylor Meadows, shows a tracking number ending in 0466. That letter was also mailed on June 10, 2016, received

¹ The date on the envelope in which the final assessment was mailed by first class mail shows a July 14, 2016 postmark.

at the Postal Service facility in Birmingham on June 11, and delivered to the addressee, Taylor Meadows, on June 13, 2016. The letter to Taylor Meadows was also “unclaimed/max hold time expired” on July 8, 2016. And like the letter to Howell, the Department remailed the assessment to Meadows by first class mail on July 13, 2016.²

The Taxpayer’s representative argues in the Taxpayer’s application for rehearing, at 3, that “Taxpayer’s representative did not receive a Certified Mail pick up notice or any certified mail regarding the Notice of Final Assessment. The first notification of the Notice of Final Assessment was received on July 20 (2016).”

The representative telephoned the Revenue Department after receiving the final assessment on July 20 and, according to the representative, spoke with a Department employee in the Sales and Use Tax Division. The representative asserts that the employee told him that the final assessment was mailed late, but that the 30 day appeal period was still open because the Department had mailed the final assessment to the representative on July 14, 2016. The representative claims that he “specifically asked (the Department employee) about the time period remaining for the Appeal and relied upon the information provided.” Taxpayer’s Application for Rehearing at 3. The representative thus contends that the Department is equitably estopped from arguing that the Taxpayer’s appeal was late. I disagree.

² Although not in evidence, it is presumed that the final assessment mailed to Meadows showed a mailing address of 5299 Cottage Ln., Hoover, AL 35226-5047, which is the correct business mailing address for both Meadows and Howell.

I agree that the Alabama Supreme Court has held that the State may be estopped from asserting that a taxpayer had failed to timely appeal “where the untimeliness of the filing of their appeal was caused by misinformation furnished by the State’s officer and relied upon by the petitioners to their detriment.” *Ex parte Four Seasons, Ltd.*, 450 So.2d 110, 112 (Ala. 1989). See also, *City of Mobile v. Sumrall*, 727 So.2d 118 (Ala. Civ. App. 1999); *Wallace v. Moore*, 684 So.2d 161 (Ala. Civ. App. 1996). The rationale of the above cases does not, however, apply in this case.

The Department is required to mail a final assessment to a taxpayer’s “last known address.” Code of Ala. 1975, §40-2A-7(b)(4)d. The taxpayer then has 30 days from the date of mailing to appeal to the Tax Tribunal. Code of Ala. 1975, §40-2A-7(b)(5)a.

The evidence shows that the Department mailed the final assessment in issue by certified mail to the Taxpayer’s last known address on June 10, 2016. Someone at the address signed for the certified mail envelope on June 18, 2016. The Taxpayer does not dispute the above facts. The Department thus properly delivered the final assessment to the Taxpayer pursuant to §40-2A-7(b)(4)d. Because the Taxpayer appealed to the Tribunal on August 12, 2016 (postmark date), or more than 30 days from when the final assessment was mailed on June 10, 2016, the Taxpayer’s appeal was untimely and was correctly dismissed.

Even if a Department employee told the Taxpayer’s representative that he had 30 days to appeal from when the final assessment was remailed to the representative by first class mail on July 14, 2016, estoppel still would not apply because the 30 day statute had already expired on July 11, 2016, before the representative’s conversation with the

Department employee on July 20, 2016.³ “Estoppel would not apply if the Department had notified the Taxpayer after the appeal period had expired that it still had time to appeal. That is, an appeal period cannot be revived after it has expired.” *Home Depot USA, Inc. v. State of Alabama*, Docket S. 06-1079 (Admin. Law Div. P.O. Granting Rehearing 5/2/2007 at 5).

The Taxpayer’s representatives executed a power of attorney form 2848A in September 2014 designating them as the Taxpayer’s authorized representatives. The form indicated that the representatives were to be sent all notices and communications, which presumably would include any final assessment. The U.S. Tax Court has held that in such cases where the power of attorney specifies that notices and other correspondence will be sent to the taxpayer’s designee, “the language is sufficient to render the address of the taxpayer’s representative the ‘last known address’ of the taxpayer.” *Maranto v. Comm.*, T.C. Memo 1999-266; see also, *Goldman v. State of Alabama*, Docket Inc. 12-751 (Admin. Law Div. 8/12/2012).

The evidence shows that the Department properly sent the final assessment in issue to both representatives by certified mail on June 10, 2016 to the representatives’ correct address in Hoover, Alabama. The USPS tracking documents show that the Postal Service delivered notice of the assessments to the representatives on June 13, 2016, and that the assessments were returned as unclaimed on July 8, 2016. Alabama’s courts have held that a taxpayer cannot extend the appeal period by refusing or failing to claim a final

³ The 30 day appeal period actually ran on July 10, 2016, but because that day was a Sunday, the appeal period expired on the next business day. See, Code of Ala. 1975, §1-1-4 and Department Reg. 810-1-5-.01(1)(b).

assessment delivered by certified mail. *Williams v. State, Dept. of Revenue*, 578 So.2d 1345 (Ala. Civ. App. 1991).

Finally, even if the Department had not sent notice to the Taxpayer's representatives, due process was satisfied because, as discussed, the Taxpayer received actual notice of the final assessment on June 18, 2016. The 30 day appeal period did not expire until July 11, 2016. 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.

The August 24, 2016 Final Order Dismissing Appeal is affirmed.⁴

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

Entered November 10, 2016.

BILL THOMPSON
Chief Tax Tribunal Judge

⁴ The Taxpayer does not dispute the amount of tax due as assessed by the Department. Rather, it argues that the 50 percent fraud penalty was improperly assessed. The Taxpayer may pay the final assessment in full and then petition for a refund of the penalty. Code of Ala. 1975, §40-2A-7(c)(1). If the refund is denied, the Taxpayer 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.

bt:dr

cc: David E. Avery, III, Esq.
Taylor Meadows, Esq.