

STAR IMPORTERS & WHOLESALERS §  
2043 MOUNTAIN INDUSTRIAL BLVD.  
TUCKER, GA 30084-6308, §

STATE OF ALABAMA  
ALABAMA TAX TRIBUNAL

Taxpayer, §

DOCKET NO. MISC. 13-420-JP

v. §

STATE OF ALABAMA §  
DEPARTMENT OF REVENUE.

**SIXTH PRELIMINARY ORDER CONCERNING  
TAXPAYER'S MOTION TO QUASH DEPARTMENT'S  
NOTICES OF DEPOSITION**

This appeal involves final assessments for State and County tobacco tax for January 2007 through July 2012 and September 2009 through July 2012, respectively. A hearing was conducted by the Department's Administrative Law Division (predecessor to the Alabama Tax Tribunal) on January 23, 2014. Subsequently, an Opinion and Preliminary Order was entered allowing the Taxpayer until July 11, 2014, to provide certain information to the Administrative Law Division. The Taxpayer submitted certain documents on that date, and the documents were forwarded on July 14, 2014, to the Department's Legal Division for review.

On July 24, 2017, the Taxpayer filed a Motion to Quash Department's Notices of Deposition. The attachments to the Taxpayer's motion showed that, on or about July 13, 2017, the Department issued three Notices of Deposition (to individuals affiliated with three different companies, including the Taxpayer), with the depositions scheduled for August 17, 2017, in Montgomery. The Taxpayer moved to have those deposition notices quashed. The Taxpayer's motion is granted.

When the Alabama Tax Tribunal was created (in Act 2014-146), Alabama's legislature authorized parties to an appeal to utilize various discovery tools. Ala. Code § 40-2B-2(j). Those tools are subject to certain restrictions, however.

First, parties are required to “make every effort to achieve discovery by informal consultation or communication before invoking the discovery mechanisms authorized by this section.” § 40-2B-2(j)(1). Then, if necessary, a party may obtain discovery by deposition testimony (among other means) “[s]ubject to reasonable limitations prescribed by the . . . Tribunal . . . .” § 40-2B-2(j)(3). The Tribunal has been authorized by statute to adopt such limitations, pursuant to its authority “to promulgate and adopt all reasonable rules . . . as may be necessary or appropriate to carry out the intent and purposes of this chapter.” § 40-2B-2(q). And the Tribunal has done so as it relates to deposition testimony (and other forms of discovery). See Ala. Admin. Code 887-X-1-.14(2).

Specifically, that administrative rule states the following:

(2) If a party cannot obtain relevant information or evidence by voluntary and informal exchange, the party may petition the Tax Tribunal to allow formal discovery. The petition shall (1) explain why the information could not be obtained by voluntary and informal exchange, and (2) identify the type or types of formal discovery requested. The requesting party shall also serve a copy of the petition on the opposing party or the opposing party’s authorized representative, who may file a written objection to the requested discovery within 14 days of the date of receipt of the petition requesting discovery. The Tax Tribunal may thereafter allow discovery by the following means: . . . depositions of parties, non-party witnesses, and experts; . . .

Id.

Here, it is undisputed that the Department did not petition the Tribunal to allow the depositions at issue. Instead, as noted, the Department issued the notices of deposition directly to the witnesses and directed the witnesses to appear in the Department’s Legal Division for depositions on August 17, 2017. Clearly, the Department’s discovery attempt did not comply with applicable statutory or regulatory law. Thus, the Taxpayer’s motion to quash the notices of deposition is granted and the notices are declared by the Tribunal to be null and of no effect. The Taxpayer’s Motion to Strike the Department’s Response to

Taxpayer's Motion to Quash is denied as moot.

The Fourth Preliminary Order, which was entered on July 14, 2014, stated that “[a]ppropriate action will be taken after the Department responds” to the documents submitted by the Taxpayer. The Department is directed to file its response no later than **September 29, 2017**. If the Department needs additional time within which to file its response, it must file a written request no later than September 29, 2017.

If the parties engage in “informal consultation or communication,” pursuant to §40-2B-2(j)(1), but those efforts produce insufficient results, either party may petition the Tribunal for formal discovery as allowed by law.

Entered August 9, 2017.

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JEFF PATTERSON  
Chief Judge  
Alabama Tax Tribunal

jp:dr

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