

ALABAMA TAX TRIBUNAL

GRC, LLC,	§	
Taxpayer,	§	DOCKET NO. COUNTY 20-100-LP
v.	§	
	§	
TUSCALOOSA COUNTY SPECIAL TAX BOARD.	§	

FINAL ORDER DISMISSING APPEAL

This appeal involves a final assessment of sales tax entered for the period May 1, 2016, through April 30, 2019. The Tuscaloosa County Special Tax Board has filed a Motion to Dismiss, which is enclosed with the Taxpayer’s copy of this Order.

The Tax Board has moved to have the appeal dismissed because the “Taxpayer did not respond to the Tax Board’s Preliminary Assessment; therefore by its terms and pursuant to Ala. Code section 40-2A-7(b)(4)b the Preliminary Assessment is deemed final (the “Final Assessment”).”

However, Section 40-2A-7(b)(4)b. reads:

- b. If a written petition for review:
 - 1. Is not timely filed, or
 - 2. Is properly filed, and upon further review the department determines the preliminary assessment is due to be upheld in whole or in part, the department *may* make the assessment final in the amount of tax due as computed by the department, with applicable interest and penalty computed to the date of entry of the final assessment. (emphasis added)

The statute does not deem a preliminary assessment a final assessment at any time but allows the Revenue Department to enter a final assessment. Additionally, Ala. Code § 40-2A-7(b)(4)d. states that a final assessment entered by the department shall be mailed by the department to the taxpayer’s last known address.

The Tax Board was directed to notify the Tax Tribunal if it entered a final assessment against the Taxpayer and, if so, provide a copy of the assessment. A copy of the Tax Board's Response and Motion for Continuance is enclosed with the Taxpayer's copy of this Order.

To begin, this appeal is dismissed for lack of jurisdiction because no final assessment has been entered against the Taxpayer.

The Taxpayer was not required to appeal a preliminary assessment. Ala. Code § 40-2A-7(b)(4)(a) states:

If a taxpayer disagrees with a preliminary assessment as entered by the department, the taxpayer may file a written petition for review with the department within 30 days from the date of mailing or personal service, whichever occurs earlier, of the preliminary assessment setting out the specific objections to the preliminary assessment. If a petition for review is timely filed, or if the department otherwise deems it necessary, the department shall schedule a conference with the taxpayer for the purpose of allowing the taxpayer and the department to present their respective positions, discuss any omissions or errors, and to attempt to agree upon any changes or modifications to their respective positions. (emphasis added)

As stated in the statute, a taxpayer may but is not required to appeal a preliminary assessment.

A preliminary assessment does not automatically become a final assessment. The notice requirements for the entry of a final assessment are listed in Ala. Code § 40-2A-7(b)(4)d and read as follows:

The final assessment entered by the department, or a copy thereof, shall be mailed by the department to the taxpayer's last known address by either (i) first class U.S. mail or certified mail with return receipt requested in the case of assessments of tax of five hundred dollars (\$500) or less or (ii) certified mail with return receipt requested in the case of assessments of tax of more than five hundred dollars (\$500). In either case and at the option of the department, the final assessment, or a copy thereof, may be delivered to the taxpayer by personal service.

The Tax Board cites Admin. r. 810-14-1-.14, but that regulation does not support the Board's position. It, too, uses the permissive "may" to allow a taxpayer to petition for review of a preliminary assessment.

An appeal of a final assessment is to the Tax Tribunal or to circuit court; it is not to the Tax Board. Furthermore, the Local Tax Simplification Act of 1998, Act No. 98-192, requires that the Tax Board follow the procedures set forth in § 40-2A-7, which includes the issuance of a stand-alone final assessment. *See generally Gen. Motors Acceptance Corp. v. City of Red Bay*, 894 So.2d 650 (Ala. 2004). The Tax Board is subject to the statute and cannot circumnavigate it by stating something different in a letter.

The law requires the Tax Board to enter a final assessment that is separate from a preliminary assessment, if it enters one at all. This position is bolstered by § 40-2A-7(b)(4)c., which allows a taxpayer to appeal a preliminary assessment after five years if no final assessment has been made. There would be no need for this statute if a preliminary assessment could be deemed a final assessment.

If the Tax Board enters a final assessment, the Taxpayer can appeal to the Alabama Tax Tribunal or to circuit court, not to the Tax Board.

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

Entered September 8, 2020.

/s/ Leslie H. Pitman

LESLIE H. PITMAN

Associate Tax Tribunal Judge

lhp:dr

cc: Chireen Anderson, CPA (w/enc.)
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