

ALABAMA TAX TRIBUNAL

EXCEL DOTHAN, LLC,	§	
Taxpayer,	§	DOCKET NO. INC. 19-1330-LP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

ORDER

This order concerns an email response to the Tribunal’s Third Preliminary Order from the Taxpayer’s representative Michael Pyle. The email was sent to the Tribunal on December 21, 2020. In the email, Mr. Pyle stated, “Please understand that due to the epidemic our mailing services have been slow and we just received this notice.” He also stated that the Taxpayer had recently filed its 2016 and 2017 income tax returns with the Alabama Department of Revenue and attached copies of those returns.

The Third Preliminary Order, to which the Taxpayer has now responded, was entered on June 2, 2020, and was presumably mailed to the Taxpayer’s representative at 233 South Wacker Drive, Suite 4700, Chicago, IL 60606. It appears that this order was returned to the Tribunal on June 4, 2020, as the file includes a postal sticker of that date stating “Return to Sender/ Revantage, PO Box 6109, Chicago, IL 60606-0011.” It was then presumably mailed to that post office box immediately.

The Third Preliminary Order directed the Taxpayer to submit 2016 and 2017 tax returns, a direction that was a repeat of a May 15, 2020, order to which the Taxpayer did not respond.

The Tribunal received no response to its Third Preliminary Order. Therefore, a Final Order was entered by the Tribunal on July 15, 2020, affirming the final assessments in the amounts of

\$18,155.89 and \$17,008.54 for tax, penalties, and interest with additional interest also due from the date the final assessments were entered.

The Final Order was sent to the Department of Revenue and, on July 16, 2020, was mailed to the Taxpayer's representative Michael Pyle, Revantage, at PO Box 6109, Chicago, IL 60606-0011. That mailing was returned to the Tribunal with a postmark date of August 25, 2020, stating "Return to Sender/Attempted – Not Known/ Unable to Forward." On September 1, 2020, the Tribunal mailed the Final Order to the Taxpayer, Excel Dothan LLC, at 17140 Bernardo Center Dr. Ste. 300, San Diego, CA 02128-2000, a street address listed on the final assessment. Again, that mailing was returned to the Tribunal and was received by the Tribunal on September 11, 2020; the return was postmarked September 6, 2020, and stated "Return to Sender/No Such Number/Unable to Forward." There is no record of the Final Order being sent to any other address.

Under the Code of Alabama, 1975, §40-2B-2(l)(5), a party may apply for rehearing of a final order "within 15 days from the date of entry of such order." Furthermore, Section 40-2B-2(m)(1) states that "[o]ther than an application for rehearing to the Alabama Tax Tribunal, the exclusive remedy for review of any final or other appealable order issued by the Alabama Tax Tribunal shall be by appeal to the appropriate circuit court." A party has "30 days from the date the final or other appealable order was entered" in which to appeal. § 40-2B-2(m)(2). While it seems clear that the Final Order was never delivered to the Taxpayer, it is nevertheless the date of entry of the Final Order that controls the time allowed for a rehearing or appeal to circuit court. As that time has clearly expired, the Taxpayer is unable to timely file for a rehearing or timely file an appeal to circuit court.

The Tribunal now requests that the Taxpayer Advocate at the Department of Revenue

review this case as described in §40-2A-4(b)(1)d.

Absent assistance from the taxpayer advocate, the Taxpayer may pay the final assessments in full and then petition the Revenue Department for a refund under §40-2A-7(c). If the refunds are denied, the Taxpayer may appeal to the Tax Tribunal or to circuit court pursuant to §40-2A-7(c)(5).

Entered February 19, 2021.

/s/ Leslie H. Pitman
LESLIE H. PITMAN
Associate Tax Tribunal Judge

lhp:cm

cc: Michael Pyle
Andrew P. Gidiere, Esq. (w/enc.)
Brenda Russ (w/enc.)