

LIMA K. PATEL
1107 COLUMBUS PARKWAY
OPELIKA, AL 36801,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC.04-1040

**PRELIMINARY ORDER DENYING DEPARTMENT'S
MOTION TO DISMISS**

This case involves a final assessment of 2001 income tax entered against the above Taxpayer. The Administrative Law Division docketed the appeal after receiving a December 13, 2004 letter from the Taxpayer's representative.

The Department has moved to have the appeal dismissed because the letter from the Taxpayer's representative (1) was not intended as a notice of appeal, (2) was not addressed to the Administrative Law Division, and (3) was not timely filed with the Administrative Law Division within 30 days as required by Code of Ala. 1975, §40-2A-7(b)(5)a. The motion is denied.

The Department entered the 2001 final assessment against the Taxpayer on November 17, 2004. Enrolled Agent Joy Lucchese wrote a letter on behalf of the Taxpayer concerning the final assessment on December 13, 2004. The letter stated that "[w]e disagree with the proposed change from IRS which ultimately changed the Alabama return." The Enrolled Agent also requested that the matter be held in abeyance "until the situation is resolved with the IRS."

The Enrolled Agent mailed the letter on December 14, 2004 to the Income Tax Division's Special Audit and Compliance Section at the post office box shown on the

face of the final assessment. Special Audit received the letter on December 16, 2004, and forwarded it to the Administrative Law Division, which received it on December 22, 2004. The Administrative Law Division docketed the letter and notified the Department's Legal Division of the appeal. As indicated, the Legal Division has moved to dismiss the appeal for the reasons stated above.

The Taxpayer, through his Enrolled Agent, disagrees with the final assessment and clearly intended her December 13 letter as an appeal. The letter, although not detailed, is also sufficient to constitute a "notice of appeal," as defined at Code of Ala. 1975, §40-2A-3(12). The letter identifies the Taxpayer and the final assessment that is the subject of the appeal. It also states that the basis for the appeal is that the Taxpayer disagrees with the IRS adjustments on which the State adjustments are based. The relief sought is clearly implied, i.e., the final assessment should be voided or reduced.

Although the letter was not addressed to the Administrative Law Division and was not received by the Administrative Law Division within 30 days, it was received by the Department within 30 days. The Administrative Law Division has consistently treated an appeal filed with another Division of the Department within 30 days as having been timely filed. *Dunbar v. State of Alabama, Inc.* 04-800 (Admin. Law Div. 12/21/04); *Tremontana v. State of Alabama, Inc.* 04-355 (Admin. Law Div. 6/10/04). That policy conforms to Code of Ala. 1975, §40-2A-2(a), which specifies that the Taxpayers' Bill of Rights and Uniform Revenue Procedures Act, Code of Ala. 1975, §40-2A-1 et seq., "shall be liberally construed to allow substantial justice."

The Department is directed to file an Answer in the case as required by Code of Ala. 1975, §40-2A-9(c). The case will then be set for hearing, or other appropriate action will be taken.

Entered January 31, 2005.

BILL THOMPSON
Chief Administrative Law Judge