

MONTICELLO INVESTMENT	§	STATE OF ALABAMA
ASSOCIATES, LLC		DEPARTMENT OF REVENUE
3100 MONTICELLO AVENUE	§	ADMINISTRATIVE LAW DIVISION
DALLAS, TX 75205-3442,		
	§	
Taxpayer,		DOCKET NO. INC. 04-1049
	§	
v.		
	§	
STATE OF ALABAMA		
DEPARTMENT OF REVENUE.	§	

FINAL ORDER DISMISSING APPEAL

Monticello Investment Associates, LLC (“Taxpayer”) filed a 2002 limited liability company return (Form 65) and a 2002 nonresident owners composite filing return (Form 65C) with the Department in July 2003. The Taxpayer paid \$31,501 with the Form 65C. The Taxpayer’s address as indicated on both forms was 3100 Monticello Avenue, Dallas, TX 75202.

The Department subsequently entered a 2002 final assessment against the Taxpayer for interest and late penalties of \$362.48 and \$4,410.14, respectively. The final assessment was entered on November 19, 2004, and mailed by certified mail to the address on the returns filed with the Department.

The envelope in which the final assessment was mailed was returned to the Department on December 14, 2004 marked “insufficient address.” The Department accessed the Texas Secretary of State’s website and discovered that a suite number (Suite 200) was included on the Secretary of State’s address. The Department subsequently included the suite number in the address and remailed the final assessment by first class mail on December 15, 2004.

It is not known when the Taxpayer received the final assessment. The Taxpayer's representative in New York wrote the Administrative Law Division a letter dated December 23, 2004, but postmarked December 27, 2004, in which he claimed that he did not receive the final assessment until December 22, 2004. He argued that the final assessment could not have been appealed within 30 days, as required by Code of Ala. 1975, §40-2A-7(b)(5)a., because it was initially mailed to an incorrect address.

The representative's letter also indicated that the 2002 Form 65 was erroneously filed, and that the \$31,501 paid with the return should be refunded.

The Administrative Law Division docketed the representative's letter as an appeal from the November 19, 2004 final assessment. The Department has moved to have the appeal dismissed because it was not timely filed within 30 days, as required by §40-2A-7(b)(5)a. As indicated, the final assessment was entered on November 19, 2004. The Taxpayer's appeal letter was not postmarked until December 27, 2004, after the 30 day appeal period had expired. Consequently, the appeal must be dismissed unless the Department failed to initially mail the final assessment to the Taxpayer's last known address, as required by Code of Ala. 1975, §40-2A-7(b)(4)c.

The requirement that the Department must mail a final assessment to a taxpayer's last known address is modeled after the federal requirement that a federal notice of deficiency must be mailed to a taxpayer's last known address. 26 U.S.C. §6212(b)(1). Consequently, federal authority should be followed in determining if the Department properly mailed the final assessment to the Taxpayer's last known address. *Best v. State, Dept. of Revenue*, 417 So.2d 197 (Ala. Civ. App. 1981).

If a final assessment is timely mailed to a taxpayer's last known address, actual receipt by the taxpayer is not required. The Department must, however, exercise reasonable diligence in determining a taxpayer's last known address. In deciding if the Department has used reasonable diligence, the focus is not on whether the taxpayer notified the Department of a new or different address, but rather on the most current information which the Department possesses. *U.S. v. Bell*, 183 B.R. 650 (S.D. FL 1995).

A mailing "is sufficient if it is mailed to the address where the Commissioner reasonable believes the taxpayer wished to be reached." *Green v. United States*, 437 F. Supp. 334, 337 (1977). As indicated, the focus is "on the most current information which the Department possesses." *U.S. v. Bell, supra*. "The controlling test . . . is whether, in light of all the pertinent circumstances, the IRS acted reasonably in mailing the deficiency notice" to the address in question. *Crum v. C.I.R.*, 635 F.2d 895, 899 (1980).

In this case, the Department mailed the final assessment to the Taxpayer's address shown on both its 2002 Form 65 and its 2002 Form 65C. The Taxpayer failed to include the suite number in the address. The address on the forms was the last known address the Department had for the Taxpayer. Consequently, because the Department properly mailed the final assessment to the Taxpayer's last known address, and because the Taxpayer failed to appeal within the required 30 days, the appeal must be dismissed for lack of jurisdiction. *Dansby v. State, Dept. of Revenue*, 560 So.2d 1066 (Ala. Civ. App. 1990).

The Taxpayer may pay the final assessment in full and then petition the Department for a refund. Code of Ala. 1975, §40-2A-7(c)(1). If the petition is denied, the Taxpayer may then appeal to the Administrative Law Division or circuit court pursuant to Code of Ala.

1975, §40-2A-7(c)(5)a. and b., respectively.

Concerning the \$31,501 that the Taxpayer claims was erroneously paid, the Taxpayer should submit a formal petition for refund for that amount with the Department's Individual and Corporate Tax Division. The address to which the petition should be mailed is Pass Thru Entity Income Tax Section, P.O. Box 327441, Montgomery, AL 36132-7441. If the petition is denied, the Taxpayer may appeal to either the Administrative Law Division or the appropriate circuit court pursuant to Code of Ala. 1975, §40-2A-7(c).

This Final Order Dismissing Appeal can be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §§40-2A-9(b) and (g) and Department Reg. 810-14-1-.24(3).

Entered February 14, 2005.

BILL THOMPSON
Chief Administrative Law Judge