

CALVIN & BELVIA MATTHEWS
115 Fairington Road
Huntsville, AL 35860,

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

Taxpayers,

§

DOCKET NO. INC. 04-413

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

**ORDER DENYING DEPARTMENT'S MOTION TO DISMISS
AND ORDER SETTING HEARING**

This case involves a disputed final assessment of 2000 income tax entered against Calvin and Belvia Matthews ("Taxpayers"). The Department has filed a motion to dismiss, arguing that the Taxpayers failed to appeal within 30 days from the date of entry of the final assessment, as required by Code of Ala. 1975, §40-2A-7(b)(5)a. The motion is denied for the reasons explained below.

The Department entered the 2000 final assessment in issue on April 19, 2004. The Taxpayers' representative mailed a Petition for Review to the Department's Individual Income Tax Division, Individual Hearings Section, on April 23, 2004. The Individual Hearings Section received the Petition on April 28 and forwarded it and a copy of the final assessment to the Administrative Law Division on May 4. The Administrative Law Division subsequently docketed the Petition as an appeal from the final assessment. It also notified the Taxpayers' representative by letter dated May 5, 2004 that the appeal had been docketed, and that the Taxpayers were not required to take any further action until the case was set for hearing.

The Department argues that the Taxpayers' Petition for Review cannot be treated as an appeal from the final assessment. I disagree. While a petition for review generally

relates to a review of a preliminary assessment, the Petition in issue was submitted by the Taxpayers after the final assessment in issue was entered. The Administrative Law Division thus correctly treated the Petition as an appeal from the final assessment. The Income Tax Division also treated the Petition as an appeal from the final assessment when it forwarded the Petition to the Administrative Law Division with a copy of the final assessment.

The Department is also estopped from arguing that the Taxpayers' appeal was not timely. That issue was previously addressed in *Press South, Inc. v. State of Alabama*, W. 02-152 (Admin. Law Div. O.P.O. 8/9/02), as follows:

The Department argues that (taxpayer's) January 18, 2002 letter cannot be treated as a timely filed appeal because it pre-dated the February 8, 2002 final assessment. I disagree.

The Administrative Law Division received (taxpayer's) appeal letter on February 8, 2002, the same day the final assessment was entered. Consequently, the appeal was technically filed with the Administrative Law Division within 30 days from when the final assessment was entered. The Department is also estopped from challenging the timeliness of the appeal based on the rationale of *Ex parte Four Seasons*, 450 So.2d 110 (Ala. 1984).

In *Ex Parte Four Seasons*, a property owner appealed to the Lauderdale County Board of Equalization concerning a property appraisal. The Lauderdale County Tax Assessor notified the property owner on October 20, 1982 that on "this date," the Board had denied the appeal. The applicable statute allowed the property owner 30 days to appeal to circuit court. The property owner appealed to circuit court on November 18, 1982, within 30 days from October 20, 1982. The State moved to have the appeal dismissed for lack of jurisdiction because the Board of Equalization had actually made its final decision in the matter on October 4, 1982, not October 20, 1982, as the property owner had been informed by the Tax Assessor. The circuit court dismissed the appeal. The Court of Civil Appeals affirmed the circuit court. *Ex parte Four Seasons*, 450 So.2d 108 (Ala.Civ.App. 1983).

The Alabama Supreme Court reversed. That Court first recognized that the doctrine of equitable estoppel generally does not apply to the State or its subdivisions. It held, however, that where the untimeliness of an appeal was caused by misinformation furnished by the government, which was relied on by the appellant, the State should be estopped from arguing that the appeal was untimely.

The doctrine of estoppel has not been applied against the State acting in its governmental capacity in the assessment and collection of taxes. *Community Action Agency of Huntsville, Madison County, Inc. v. State*, 406 So.2d 890 (Ala. 1981); *State v. Maddox Tractor & Equipment Co.*, 260 Ala. 136, 69 So.2d. 426 (1953). However, the petitioners in this case are not seeking to estop the state from assessing or collecting the tax owed. Rather, they are attempting to preserve their right to a hearing in a state court, where the untimeliness of the filing of their appeal was caused by misinformation furnished by the state's officer and then relied upon by the petitioners to their detriment.

Ex parte Four Seasons, 450 So.2d at 111.

The rationale of *Ex parte Four Seasons* applies in this case. The Administrative Law Division notified (taxpayer) by letter on February 12, 2002 that it had treated his January 18 letter as an appeal of the final assessment in issue. The letter also notified (taxpayer) that he did not need to take any further action concerning the matter. After receiving the above letter, (taxpayer) certainly and reasonably believed that the final assessment had already been appealed. Consequently, he took no further action in the matter, as instructed by the Administrative Law Division's February 12 letter, although the 30 day appeal period was still open. To dismiss the Taxpayer's appeal under the circumstances would constitute a denial of due process, and, as stated by Justice Adams in *Ex parte Four Seasons*, "would result in such manifest injustice that it cannot be allowed." *Ex parte Four Seasons*, 450 So.2d at 112.

Press South, at 2 – 4.

As in *Press South*, the Administrative Law Division notified the Taxpayers in this case on May 5, 2004, within the 30 day appeal period, that their appeal had been docketed, and that they did not need to take further action until the case was set for

hearing. The Department is thus equitably estopped from arguing that the Taxpayers had not timely appealed.

Paragraph 4 in the Department's motion to dismiss addresses the substantive issues involved in the case. Consequently, the motion will be treated as the Department's Answer in the case.

The case is set for hearing at **9:30 a.m., August 13, 2004** at the **Revenue Department's Birmingham Taxpayer Service Center, 2024 3rd Avenue North, Birmingham, Alabama.**

Entered June 14, 2004.

BILL THOMPSON
Chief Administrative Law Judge