

EDWARD GIBSON  
P.O. Box 975  
Dothan, AL 36303,

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

§

Taxpayer,

§

DOCKET NO. INC. 04-689

v.

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

§

### **FINAL ORDER DISMISSING APPEAL**

This appeal involves a final assessment of 1998 Alabama income tax entered against the above Taxpayer. A copy of the Department's Motion to Dismiss is enclosed with the Taxpayer's copy of this Order. The Department argues that the appeal should be dismissed because the Taxpayer failed to timely file his notice of appeal with the Administrative Law Division, as required by Code of Ala. 1975, 40-2A-7(b)(5)a. That statute requires that a notice of appeal from a final assessment must be filed with the Administrative Law Division within 30 days. If the appeal is not timely filed, it must be dismissed for lack of jurisdiction. Code of Ala. 1975, §40-2A-7(b)(5)c.; *Dansby v. State, Dept. of Revenue*, 560 So.2d 1066 (Ala.Civ.App. 1990). The motion is granted for the reasons explained below.

The Taxpayer failed to file a 1998 Alabama income tax return. The Department received IRS information indicating that the Taxpayer resided in Alabama and received income sufficient to require him to file a return in that year. It computed the Taxpayer's liability based on the IRS information, and notified the Taxpayer of the amount due. The Taxpayer failed to respond. The Department consequently entered a preliminary assessment against the Taxpayer on February 25, 2004 for the tax due, plus penalties and

interest.

The Taxpayer filed a petition for review of the preliminary assessment with the Income Tax Division's Individual Hearings Section on March 5, 2004. He failed, however, to state any specific objections to the preliminary assessment, as required by Code of Ala. 1975, §40-2A-7(b)(4)a. The Department wrote the Taxpayer on May 4, 2004 and requested that the Taxpayer specify his objections to the preliminary assessment. On June 3, 2004, the Department's Individual Hearings Section received a June 2 letter from the Taxpayer. The letter failed to state any specific objections to the preliminary assessment. Rather, it requested "an Official and Law-Hearing on the above claimed by you Tax Year." The letter also requested that any hearing be scheduled in Dothan, Alabama.<sup>1</sup>

Because the Taxpayer again failed to state any specific objections to the preliminary assessment, the Individual Hearings Section denied the Taxpayer's petition for review on June 23, 2004. The Hearing Officer's report and a separate letter were mailed to the Taxpayer. The separate letter specified that any subsequently entered final assessment may be appealed to the Administrative Law Division within 30 days. The Department entered the final assessment in issue on July 1, 2004. An attachment to the final assessment explained that if the Taxpayer disagreed with the final assessment, he could appeal to the Administrative Law Division within 30 days. The attachment also contained the Administrative Law Division's address.

The Taxpayer failed to file a notice of appeal with the Administrative Law Division within 30 days from the July 1 final assessment. However, on August 4, 2004 the

---

<sup>1</sup> Section 40-2A-7(b)(4)a. specifies that if requested by a taxpayer or deemed necessary by the Department, a conference will be conducted concerning any petition for review.

Administrative Law Division received from the Individual Hearings Section a copy of the Taxpayer's June 2 letter. The Administrative Law Division, pursuant to its usual procedures, docketed the appeal and notified the Taxpayer and the Department's Legal Division that an appeal had been filed.

The Department argues that the Taxpayer's June 2 letter cannot be treated as a timely filed appeal pursuant to §40-2A-7(b)(5)a. because (1) it related to the preliminary assessment pending before the Individual Hearings Section and was submitted before the final assessment was entered, and (2) it was not timely filed or received by the Administrative Law Division within the required 30 days. I agree.

The Taxpayer's June 2 letter clearly related to his challenge of the preliminary assessment previously entered by the Department, not the final assessment subsequently entered on July 1. The Taxpayer's letter also does not indicate an intent to appeal from a final assessment. Consequently, it cannot be treated as an appeal from the July 1 final assessment.<sup>2</sup>

The Taxpayer in this case was given several opportunities by the Department's Individual Hearings Section to state his objections to the preliminary assessment entered by the Department, as he was required to do by §40-2A-7(b)(4)a. He failed to do so. He was also notified by the Individual Hearings Section and also by an attachment with the

---

<sup>2</sup> The fact that the Individual Hearings Section did not forward the Taxpayer's June 2 letter to the Administrative Law Division until after the 30 day appeal had expired is irrelevant. Even if the Administrative Law Division had received the letter within the 30 day appeal period, it still could not treat the letter as an appeal for the reasons stated above. I note, however, that if the Taxpayer had actually filed an appeal from the final assessment with the Individual Hearings Section within 30 days after the final assessment was entered, it would have been treated as a timely filed appeal. See, *Johnson v. State of Alabama, Inc.* 03-275 (Admin. Law Div. 7/29/03).

final assessment that if he disagreed with the July 1 final assessment, he must appeal to the Administrative Law Division within 30 days. He was also provided with the Administrative Law Division's mailing address. He failed, however, to file an appeal with the Administrative Law Division. Consequently, the Administrative Law Division is without jurisdiction. This case is dismissed from the Administrative Law Division docket.

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 September 13, 2004.

---

BILL THOMPSON  
Chief Administrative Law Judge