

WARD ASSOCIATES, INC.
924 BESSEMER ROAD
BIRMINGHAM, AL 35228-1409,

§
§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. CORP. 05-1053

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER DISMISSING APPEAL

The Revenue Department has moved to have this appeal dismissed because the Taxpayer failed to timely appeal the final assessment in issue within 30 days as required by Code of Ala. 1975, §40-2A-7(b)(5). The motion is granted.

A taxpayer must appeal a final assessment within 30 days. Code of Ala. 1975, §40-2A-7(b)(5)a. The 30 day appeal period must be strictly followed. *Dansby v. State, Dept. of Revenue*, 560 So.2d 1066 (Ala.Civ.App. 1990). If the appeal is not timely filed, "the appeal shall be dismissed for lack of jurisdiction." Code of Ala. 1975, §40-2A-7(b)(5)c.

The Department entered the corporate tax final assessment in issue on June 22, 2005. The Taxpayer's representative faxed his appeal letter to the Department's Corporate Tax Division on August 16, 2005. It was also forwarded to the Administrative Law Division on September 21, 2005. The appeal was thus not timely filed within 30 days.

Even if the Taxpayer's representative had faxed the notice of appeal within 30 days, it could not be accepted as a properly filed appeal. The Alabama Supreme Court has held that a faxed notice of appeal does not constitute a proper filing of an appeal, absent an agency rule to the contrary. *Ex parte Tuck*, 622 So.2d 929 (Ala. 1993). The Revenue Department does not have a rule allowing the filing of an appeal by fax with the Administrative Law Division. Consequently, the faxed appeal was insufficient.

The Taxpayer's appeal is dismissed for lack of jurisdiction. The Taxpayer may, however, pay the final assessment in full and then petition for a refund.

This 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 October 18, 2005.

BILL THOMPSON
Chief Administrative Law Judge