

DONALD ROBERTS
4 OLD HUNTSVILLE ROAD
FAYETTEVILLE, TN 37334-6018,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 05-1074

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

This case involves a final assessment of 1997 Alabama income tax entered against the above Taxpayer. The Department has filed its Answer and has moved that the appeal be dismissed because the Taxpayer failed to appeal within 30 days from the date the final assessment was entered, as required by Code of Ala. 1975, §40-2A-7(b)(5)a. The motion is denied for the reasons explained below.

The Taxpayer submitted some documents concerning his 1997 liability to the Department's Individual Hearings Section on September 19, 2005. However, the final assessment process had already begun, and the Department subsequently entered the final assessment in issue on September 21, 2005.

The Individual Hearings Section forwarded the documents and the final assessment to the Administrative Law Division on September 29, 2005. The Administrative Law Division docketed the documents as an appeal from the final assessment, and so notified the Taxpayer by acknowledgment letter dated September 30, 2005. That letter notified the Taxpayer that his appeal had been docketed, and that he did not need to take further action until he heard from the Administrative Law Division.

The Department claims that the documents cannot be treated as an appeal because they were submitted before the final assessment was entered. However, the Administrative Law Division did not receive the documents until September 29, 2005, after the final assessment was issued. The Individual Hearings Section also treated the documents as an appeal of the final assessment because it forwarded the documents to the Administrative Law Division with a copy of the final assessment. The Administrative Law Division thus correctly treated the documents as an appeal from the final assessment.

A similar fact situation was involved in a prior appeal before the Administrative Law Division, *Press South, Inc. v. State of Alabama*, W. 02-152 (Admin. Law Div. O.P.O. 8/9/02). In that case, the Department billed the taxpayer for withholding tax, penalties, and interest. The taxpayer paid the tax and interest, but wrote a letter to the Department's Individual Income Tax Division asking that the penalties be waived. The Department denied the request, and entered a final assessment against the taxpayer.

The Individual Income Tax Division forwarded the Taxpayer's letter to the Administrative Law Division on the same day the Department entered the final assessment against the taxpayer. The Administrative Law Division treated the letter as a timely filed appeal. The Department objected, arguing that the Administrative Law Division was without jurisdiction because the Taxpayer's letter was submitted before the final assessment was entered. The Administrative Law Division rejected the Department's position, as follows:

The Department argues that Marino'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 Marino'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 Marino 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 Marino that he did not need to take any further action concerning the matter. After receiving the above letter, Marino 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.

The rationale of *Ex parte Four Seasons* also applies in this case. The Income Tax Division treated the documents submitted by the Taxpayer as an appeal, and consequently submitted the documents and the final assessment to the Administrative Law Division. The Administrative Law Division notified the Taxpayer within the 30 day appeal period that it had docketed his appeal and that he did not need to take further action at that time. Consequently, the Department is estopped from now arguing that the Taxpayer failed to properly appeal.

The Taxpayer is directed to explain in writing why he is appealing the 1997 final assessment, as required by Code of Ala. 1975, §40-2A-9(c). The explanation should be submitted to the Administrative Law Division by November 18, 2005, and should specify the reasons for the appeal. If the Taxpayer fails to respond by the above date, the final assessment will be affirmed. If the Taxpayer has any questions, he should contact the Administrative Law Division at 334-954-7195

Entered October 25, 2005.

BILL THOMPSON
Chief Administrative Law Judge