

COOSA MART, A PARTNERSHIP §  
AND ITS PARTNERS, JOHN MARTIN, §  
M.R. SMOTHERS MARTIN, AND ALL §  
OTHER PARTNERS, §

Taxpayer, §

v. §

STATE OF ALABAMA §  
DEPARTMENT OF REVENUE. §

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 05-325

### FINAL ORDER DISMISSING APPEAL

The Revenue Department assessed Coosa Mart, a partnership, and its partners, John A. Martin and M.R. Smothers Martin, for sales tax for January through September 2003. John A. Martin ("Taxpayer") appealed to the Administrative Law Division. The Department subsequently filed a motion to dismiss, claiming that the Taxpayer had failed to appeal within 30 days, as required by Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on the motion on July 6, 2005. Steven Brown and Gerald Vines represented the Taxpayer. Assistant Counsel Keith Maddox represented the Department.

A taxpayer must appeal a final assessment within 30 days. Section 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.

As discussed below, the Taxpayer failed to appeal to the Administrative Law Division within the required 30 days. The Taxpayer argues, however, that he was denied due process because the final assessment was not properly mailed to him as required by Alabama law. I disagree.

The final assessment in issue was entered on December 7, 2004. The Department mailed the final assessment by certified mail to 322 Parkway Drive, Leeds, AL 35094, which was the address on Coosa Mart's application for a sales tax license. The final assessment was returned by the U.S. Postal Service marked "no such number." The Department subsequently remailed the final assessment by certified mail on December 21, 2004 to Brenda's Accounting and Tax Service, 803 Ashville Road NE, Leeds, AL 35094. That address was also listed on Coosa Mart's sales tax application. The final assessment was again returned marked "no such number."

After the final assessment was returned a second time, the Department cross-referenced the Taxpayer's social security number in its computer system and found that the Taxpayer's address as shown on his most recent Alabama income tax return was 2541 Eastern Valley Road, Leeds, AL 35094. It remailed the final assessment to that address by certified mail. The Taxpayer received the final assessment on January 20, 2005. He subsequently appealed to the Administrative Law Division.

Code of Ala. 1975, §40-2A-7(b)(4)c. requires the Department to mail a final assessment over \$500 by certified mail to the taxpayer's last known address. The issue of whether the Department properly mailed a final assessment to a taxpayer was previously addressed in *Monticello Investment Assoc., Inc. v. State of Alabama, Inc.* 04-1049 (Admin. Law Div. 2/14/05), as follows:

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).

*Monticello Investment* at 2, 3.

In this case, the Department properly mailed the final assessment to the address shown on Coosa Mart's sales tax application. The Department had no information showing that the business had moved or had a different address. The address shown on Coosa Mart's sales tax application was the business' last known address in the Department's database. Consequently, because the Department correctly mailed the final assessment to the last known address as required by Alabama law, the Taxpayer's appeal must be dismissed for lack of jurisdiction. The fact that the Taxpayer did not timely receive the final assessment is irrelevant. See, *Williams v. State, Dept. of Revenue*, 578 So.2d 1345 (Ala. Civ. App. 1991); *Beach v. State of Alabama, Inc.* 00-615 (Admin. Law Div. O.D.A. 11/28/00).

Although the July 6 hearing involved only the Department's motion to dismiss, for the sake of judicial economy, the Taxpayer testified at the hearing concerning the merits of the

case. He claimed that his estranged wife, Marsha Martin, operated the business during the period in issue, and that he should not be held liable for the sales tax due for the period. He explained in detail that in January 2003, the Jefferson County Circuit Court issued a Restraining Order which effectively prohibited him from the Coosa Mart premises. Marsha Martin also closed the joint business bank account and opened a new one in her name only. She also obtained a business licenses from the City of Leeds in her name only during the period.

If the Taxpayer pays the final assessment and petitions for a refund, the Department should consider the above facts in deciding if the refund should be granted. A copy of the transcript of the July 6 hearing is enclosed with the Sales and Use Tax Division's copy of this Final Order so that it may review the transcript at the appropriate time.

This Final Order Dismissing Appeal may be appealed to circuit court pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered August 1, 2005.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: Margaret Johnson McNeill, Esq.  
Steven C. R. Brown, Esq.  
James Browder (w/transcript)