

ORACLE CORPORATION
P.O. BOX 5200
BELMONT, CA 94002,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 05-355

FINAL ORDER

This appeal involves the Department's partial denial of State sales tax refunds for February 2001 through April 2004. The Taxpayer timely filed its notice of appeal with the Administrative Law Division on March 1, 2005. The Administrative Law Division notified the Department of the appeal on March 2, 2005. The Revenue Department is required to file an Answer with the Administrative Law Division within 30 days from being notified of an appeal. A 60 day extension may be granted if requested by the Department, which would have allowed the Department until June 3, 2005 to file its Answer. See, Code of Ala. 1975, §40-2A-9(c). The Department failed to request an extension, and failed to file its Answer by the June 3, 2005 deadline.

The Taxpayer has moved for relief because the Department failed to comply with §40-2A-9(c). The motion is granted. Because the Department failed to file its Answer within the required 90 days, the refunds in issue must be granted for the reasons explained in *MeadWestVaco Coated Board, Inc. v. State of Alabama, Corp.* 05-565 (Admin. Law Div. 8/11/05); *Plantation Oaks of Alabama, Inc. v. State of Alabama*, S. 04-728 (Admin. Law Div. 1/6/05); *Sellars v. State of Alabama, Inc.* 02-859 (Admin. Law Div. 2/21/03); *J.P.'s Finishing Products v. State of Alabama*, S. 98-338 (Admin. Law Div. 8/1/00); *Walter W. Muncaster v. State of Alabama*, S. 98-273 & S. 98-408 (Admin. Law

Div. 6/16/00); *Varcak v. State of Alabama, Inc.* 97-420 (Admin. Law Div. 8/18/98); *State of Alabama v. Sungard Business Systems, Inc.*, U. 94-310 (Admin. Law Div. 1/10/95); and *State of Alabama v. Bishop-Parker Furniture Co., Inc.*, S. 93-252 (Admin. Law Div. 3/31/94).

None of the eight cases cited above were appealed to circuit court.¹ As previously stated by the Administrative Law Division in *Plantation Oaks, supra*, if the Department believes that the Administrative Law Division has misconstrued §40-2A-9(c), it should appeal to circuit court. If a circuit or appellate court determines that the Administrative Law Division is not required to grant a taxpayer relief if the Department fails to file an Answer within 90 days, the Administrative Law Division will proceed accordingly. In the meantime, all Answers must be filed within the 90 day deadline. See, *Plantation Oaks*, at 4.

The Department is directed to remit to the Taxpayer the refunds in issue. Judgment is entered accordingly.

This Final Order may be appealed to circuit court within 30 days from the date of this Order pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered September 15, 2005.

BILL THOMPSON
Chief Administrative Law Judge

¹ *MeadWestVaco Coated Board* is presently pending on rehearing before the Administrative Law Division.