

BOBBY J. & NANCY L. WILLIS	§	STATE OF ALABAMA
578 WILLIS ROAD		DEPARTMENT OF REVENUE
UNION GROVE, AL 35175,	§	ADMINISTRATIVE LAW DIVISION
Taxpayers,	§	DOCKET NO. INC. 05-407
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

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

This case involves a final assessment of 1998 Alabama income tax entered against the above Taxpayers. The Department has moved to have the appeal dismissed because it was not timely filed within 30 days, as required by Code of Ala.1975, §40-2A-7(b)(5)a. The motion is denied for the reasons explained below.

The final assessment in issue was entered on February 10, 2005. The Taxpayers had 30 days from that date, or until March 12, 2005, to file their appeal. The envelope in which the Taxpayers mailed their appeal was properly addressed to the Administrative Law Division, and was postmarked on March 14, 2005.

Code of Ala. 1975, §40-1-45 provides in substance that if an appeal is properly addressed to the Administrative Law Division and is postmarked within the period in which the appeal is required to be filed, then the appeal shall be deemed timely. The Department argues, however, that the §40-1-45 mailbox rule only applies if the appeal is postmarked within 30 days. "Thus, to invoke the 'mailbox rule,' the postmark date must be before, within, or on the expiration of the (30) day period." Dept. Motion to Dismiss at 2.

I disagree. Section 40-1-45 requires only that the appeal must be postmarked on or before the date on which the appeal is required to be filed. Generally, that date is 30 days

from when the final assessment was entered. However, Code of Ala. 1975, §1-1-4 provides that if the last day on which a document must be filed falls on a Sunday, a legal holiday, or “a day on which the office in which the act must be done shall close,” the next working day shall be deemed the last day for filing.

In this case, the 30th day was Saturday, March 12, 2005. The Department is correct that a Saturday is not per se a legal holiday. However, the Administrative Law Division, which is the “office in which the act must be done,” is closed on Saturday. Consequently, the Taxpayers had until Monday, March 14, 2005 to file their appeal. The Taxpayers thus timely filed the appeal on that date pursuant to the §40-1-45 mailbox rule.

The Department argues that the phrase “in which the act must be done” in §1-1-4 refers to the mailing of the appeal. “Also, the ‘office in which the act must be done’ in this instance is the United States Post Office and not the Alabama Department of Revenue, Administrative Law Division. The ‘mailbox rule’ is invoked at the United States Post Office. Thus, the Taxpayer could have had their appeal postmarked up until noon on Saturday, March 12, 2005, which would have properly invoked the ‘mailbox rule.’” Dept. Motion to Dismiss at 3.

Again, I disagree. The “act” referred to in §1-1-4 is clearly the filing of the appeal with the Administrative Law Division. The last day on which that act could be timely performed in this case fell on a Saturday. As discussed, because the Administrative Law Division is closed on Saturday, the Taxpayers had until Monday, March 14, to file their appeal. They did so pursuant to the §40-1-45 mailbox rule. The fact that the U.S. Post Office is open on Saturday is irrelevant.

The Department’s motion is denied. The Department should file its Answer as

required by Code of Ala. 1975, §40-2A-9(c). The case will then be set for hearing, or other appropriate action will be taken.

Entered April 20, 2005.

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BILL THOMPSON  
Chief Administrative Law Judge