

VERNON SNODDY
9400 CLEVELAND ROAD
NORTHPORT, AL 35473-8356,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

§

§

§

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC.05-421

**PRELIMINARY ORDER DENYING IN PART
AND GRANTING IN PART DEPARTMENT'S
MOTION TO DISMISS**

This case involves final assessments of 1997, 2000, and 2001 Alabama income tax entered against the above Taxpayer. The Department has moved to have the appeal dismissed because the Taxpayer failed to timely perfect the appeal as required by Code of Ala. 1975, §40-2A-7(b)(5)a. As explained below, the appeal of the 2001 final assessment is due to be dismissed. However, the Department's motion to dismiss concerning the appeal of the 1997 and 2000 final assessments is denied.

The 2001 final assessment was entered on December 29, 2004. The Taxpayer's appeal letter is postmarked March 9, 2005, and was received by the Department's Individual and Corporate Income Tax Division on March 10, 2005. The appeal concerning 2001 was thus not timely filed within 30 days as required by Code of Ala. 1975, §40-2A-7(b)(5)a. That appeal is due to be dismissed when a Final Order is subsequently entered in the case.

The 1997 and 2000 final assessments were entered on February 10, 2005. As indicated, the Taxpayer's appeal was received by the Department's Individual and Corporate Tax Division on March 10, 2005. That Division forwarded the letter to the Administrative Law Division, which received it on March 16, 2005.

The Taxpayer's appeal was received by the Department's Individual and Corporate Income Tax Division within the required 30 days. The Administrative Law Division has consistently treated an appeal received by the Department within 30 days as having been timely filed.¹ *Dunbar v. State of Alabama, Inc.* 04-800 (Admin. Law Div. 12/21/04); *Tremontana v. State of Alabama, Inc.* 04-355 (Admin. Law Div. 6/10/04), and many others. The Individual and Corporate Income Tax Division could have forwarded the appeal to the Administrative Law Division on the day it was received, in which case there would be no question that the appeal was timely. The fact that the appeal was not forwarded to the Administrative Law Division until after the 30 day appeal period had expired should thus be of no consequence. Treating the appeal as timely under the circumstances also conforms to Code of Ala. 1975, §40-2A-2(a), which specifies that the Taxpayers' Bill of Rights and Uniform Revenue Procedures Act, Code of Ala. 1975, §40-2A-1 et seq., "shall be liberally construed to allow substantial justice."

The Department is directed to file an Answer concerning the 1997 and 2000 final assessments 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.

BILL THOMPSON
Chief Administrative Law Judge

¹ The Department encloses an envelope addressed to the Individual and Corporate Tax Division when it mails an income tax final assessment to a taxpayer. The same post office box address shown on that envelope is also printed on the face of every income tax final assessment. Consequently, it is understandable that some taxpayers mistakenly mail their notice of appeal to the Individual and Corporate Income Tax Division either using the envelope provided by the Department or the address on the face of the final assessment.