

ALThERIA V. JONES-MILES  
5681 E PASEO DEL CENADOR  
TUCSON, AZ 85750-1470,

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§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. INC. 05-627

v.

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

§

**PRELIMINARY ORDER DENYING  
MOTION TO DISMISS**

This appeal involves a final assessment of 2001 Alabama income tax entered against the Taxpayer by the Department on May 25, 2005. The Department has moved to dismiss the appeal because the Taxpayer mailed her appeal letter before the final assessment was entered. The letter is dated April 26, 2005. The Taxpayer mailed the letter to the Individual Audit Section of the Department's Income Tax Division, which received it on May 2, 2005. That Section subsequently forwarded it to the Administrative Law Division, which received it on May 24, 2005.

The Department's motion to dismiss is denied. The Taxpayer's appeal letter clearly indicates that the Taxpayer intended to appeal her 2001 Alabama income tax liability. The letter reads in part – "This is an official appeal letter . . . Please send to a appeal board and I will mail the info to them. I AM FILING AN APPEAL TO YOUR FINDING, PLEASE FORWARD . . ."

The Taxpayer's appeal letter was on file with the Administrative Law Division when the final assessment was entered. Consequently, it was technically "filed" with the Administrative Law Division within the 30 day appeal period, as required by §40-2A-7(b)(5)a.

The Administrative Law Division treated the letter as a timely filed appeal from the 2001 final assessment, and notified the Taxpayer by letter dated May 25, 2005 that her appeal had been received and docketed. The letter also informed the Taxpayer that she did not need to take any further action at that time. Consequently, under the circumstances, the Department is estopped from not treating the letter as a timely appeal. This same issue was addressed in *Press South, Inc. v. State of Alabama*, W. 02-152 (Admin. Law Div. O.P.O. 8/9/02). The Order in that case reads in part as follows:

Code of Ala. 1975, §40-2A-7(b)(5)a. provides that a taxpayer may appeal a final assessment to the Administrative Law Division within 30 days from the date the final assessment is entered. If the appeal is not timely filed within 30 days, it must be dismissed for lack of jurisdiction. Code of Ala. 1975, §40-2A-7(b)(5)c.; *Dansby v. State, Dept. of Revenue*, 560 So.2d 1066 (Ala. Civ. App. 1990).

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.

*Press South*, at 2 – 4.

The above rationale also applies in this case. The Administrative Law Division notified the Taxpayer by letter dated May 25, 2005 that her appeal had been docketed and that she was not required to take any further action in the matter. As in *Press*

*South*, “[t]o 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 4; see also, *Tremontana v. State of Alabama, Inc.* 04-355 (Admin. Law Div. 6/10/04).

By separate Order, the case has been set for hearing at **2:30 p.m., August 25, 2005** in the Business Center of Alabama Building, 2 N. Jackson Street, Suite 301, Montgomery, Alabama.

Entered June 28, 2005.

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BILL THOMPSON  
Chief Administrative Law Judge