

JUAN HERNANDEZ
CARIBBEAN SHIPPING, INC.
P.O. BOX 626
BAYOU LA BATRE, AL 36509,

Petitioner,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 05-708

**PRELIMINARY ORDER DENYING
DEPARTMENT'S MOTION TO DISMISS
AND SETTING HEARING**

This appeal involves the Department's denial of a sales tax exemption requested by the above Petitioner. The Department has filed a motion to dismiss because the Petitioner failed to appeal the Department's denial of the exemption within 30 days, as required by Code of Ala. 1975, §40-2A-8(a). The motion is denied for the reasons explained below.

Section 40-2A-8(a) provides that anyone aggrieved by an act or proposed act of the Department has 30 days to appeal. That provision was included in the statute to give an aggrieved party a 30 day grace period in which to appeal. If the aggrieved party fails to appeal within 30 days, the "department may proceed with the intended action" Section 40-2A-8(b).

Unlike the 30 day period within which taxpayers must appeal a final assessment, the 30 day appeal period in 40-2A-8(a) is not jurisdictional. Code of Ala. 1975, §40-2A-7(b)(5)c. specifies that if a final assessment is not timely appealed, "the appeal shall be dismissed for lack of jurisdiction." Likewise, if a taxpayer fails to timely appeal a denied refund, §40-2A-7(c)(5)c. specifies that "the appeal shall be dismissed for lack of jurisdiction." There is no such jurisdictional provision in §40-2A-8.

The Petitioner's appeal also should not be dismissed as a practical matter because the Petitioner could simply apply to the Department for another exemption certificate, and then appeal from the Department's denial of the request.

The Department has also filed an Answer in this case. A copy is attached to the Petitioner's copy of this Order. The case is set for hearing at **2:30 p.m., November 14, 2005** at Barlow & Associates, Court Reporters, 3217 Executive Park Circle, Mobile, Alabama.

Entered September 27, 2005.

BILL THOMPSON
Chief Administrative Law Judge