

JEFFERY L. RIVERS
630 COUNTY ROAD 218
ARLEY, AL 35541,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 06-610

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

This case involves final assessments of 1997 and 1998 income tax entered against the above Taxpayer. The Department has filed a motion to dismiss the appeal. The motion is denied for the reasons explained below.

The Department entered the final assessments in issue on June 23, 2006. The Taxpayer filed Alabama returns for the subject years with the Department on June 28, 2006. The Department forwarded the returns to the Administrative Law Division on June 30, 2006. The Administrative Law Division docketed the returns as an appeal. It also notified the Taxpayer that an appeal from the final assessments had been filed, and that he did not need to take further action at that time.

The Department claims that the Taxpayer's appeal should be dismissed because he failed to include a cover letter with the returns stating the reasons why he disputes the final assessments. The Department is correct that Code of Ala. 1975, §40-2A-9(c) requires taxpayers to specify in their notice of appeal why they dispute a final assessment. However, failure to do so is not jurisdictional. Section 40-2A-9(c) also provides that the "administrative law judge may require additional information" from the taxpayer. Also, Dept. Reg. 810-14-1-.24 specifies – "If the notice of appeal does not contain sufficient

information, the taxpayer may be required to provide such additional information as directed by the administrative law judge.” That regulation confirms that a taxpayer’s failure to fully specify the reasons for an appeal, as required by §40-2A-9(c), is not a fatal defect in the appeal.¹

This is a simple case. The Taxpayer failed to file returns for the subject years. The Department subsequently assessed the Taxpayer based on IRS information. The Taxpayer then filed returns within the 30 day appeal period. The Taxpayer’s objections to the final assessments are self-evident. He claims the final assessments are wrong and that the returns are correct. A detailed explanation is not necessary.

The Department should review the returns and file its Answer within the time specified in Code of Ala. 1975, §40-2A-9(c). Appropriate action will then be taken.

Entered August 8, 2006.

BILL THOMPSON
Chief Administrative Law Judge

¹ The Department would also be estopped from not treating the returns as an appeal because the Administrative Law Division notified the Taxpayer within the 30 day appeal period that an appeal had been filed and he did not need to take further action at that time. See, *Jones-Miles v. State of Alabama, Inc.* 05-627 (Admin. Law Div. 6/28/05); *Press South, Inc. v. State of Alabama*, W. 02-152 (Admin. Law Div. O.P.O. 8/9/02).