

COMPASS MARKETING INC.  
P.O. BOX 3388  
GULF SHORES, AL 36547-3388,

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. S. 07-987

v.

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

§

**SECOND PRELIMINARY ORDER DENYING TAXPAYER'S  
MOTION TO RECONSIDER MOTION TO DISMISS**

The Taxpayer filed a motion to dismiss the final assessment in this case because the Department failed to timely file its Answer within 90 days, as provided in Code of Ala. 1975, §40-2A-9(c). The Administrative Law Division denied the motion by Preliminary Order entered on March 11, 2008. The Taxpayer has moved for the Administrative Law Division to reconsider and reverse that holding. The motion to reconsider is denied.

The Taxpayer is correct that the Administrative Law Division and taxpayers have no mechanism or method to verify when a notice of appeal from the Administrative Law Division is received by the Legal Division, other than the Legal Division's own date stamp. The Taxpayer is also correct that the Administrative Law Division has in prior cases assumed that the Legal Division received the notice on the date the Administrative Law Division issued the notice. But the applicable statute allows the Legal Division 30 days "from receipt of notice" to respond, not 30 days from the date of the notice. See, Code of Ala. 1975, §40-2A-9(c).

The Taxpayer is again correct that the Administrative Law Division has held in prior cases that granting relief to a taxpayer was mandatory if the Department failed to file its Answer within 90 days. But as stated in the March 11, 2008 Preliminary Order in this case,

the Administrative Law Division has reconsidered its position and now maintains that granting relief in such cases is discretionary with the Administrative Law Division, not mandatory.

The Administrative Law Division has also held that the 90 day Answer period is mandatory. On reconsideration, however, Reg. 810-14-1-.24 gives the Administrative Law Division discretion to grant a taxpayer the requested relief. Granting relief is thus discretionary, not mandatory. If there is reasonable cause or a plausible explanation why the Department did not timely file its Answer, then the Administrative Law Division, in its discretion, may not grant a taxpayer relief. If, however, there is no reasonable cause why the Department failed to comply with §40-2A-9(c), relief will be granted.

*JSC Brewton, Inc. v. State of Alabama, Corp.* 07-554 (Admin. Law Div. Order Denying Taxpayer's Motion to Dismiss 12/3/2007) at 3.

In this case, the Administrative Law Division's notice to the Legal Division was dated December 6, 2007. However, the Department attorney in Mobile to whom the case was assigned did not receive the notice until January 9, 2008. He requested a 60 day extension to file the Department's Answer on that date. The request was granted. On March 4, 2008, before the 60 day extension expired, the attorney filed a *pro forma* Answer indicating that he had not yet received the Taxpayer's file from the applicable operating Division. The Administrative Law Division directed the attorney to file an Amended Answer when the Division file was received. The attorney subsequently filed the Amended Answer on March 11, 2008, one day after receiving the Division file.

The Legal Division's request for a 60 day extension filed on January 9, 2008 may or may not have been filed within 30 days from when the Legal Division actually received the notice of appeal from the Administrative Law Division. But the *pro forma* Answer filed on March 4, 2008 was filed within 90 days, even if the Legal Division received the notice of

December 6, 2007, the date the notice was issued. And as stated in the March 11 Preliminary Order, the fact that the *pro forma* Answer does not contain all of the information specified in Code of Ala. 1975, §40-2A-9(c) does not constitute sufficient grounds to grant the Taxpayer relief under the circumstances. Rather, in such cases, §40-2A-9(c) allows the Administrative Law Division to require the Legal Division to provide such additional information as deemed necessary, which the Legal Division did in this case.

At the Department's request, the hearing set in this case for April 22, 2008 has been reset for **9:30 a.m., June 10, 2008** at Barlow & Associates Court Reporters, 3217 Executive Park Circle, Mobile, Alabama.

Entered April 15, 2008.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: Duncan R. Crow, Esq.  
Blake A. Madison, Esq.  
Joe Cowen  
Mike Emfinger