

ROBERT A. BEACH
1412 Polaris Avenue
Mobile, AL 36693,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 00-615

ORDER DISMISSING APPEAL

The Department moved to dismiss this appeal because the Taxpayer failed to appeal the final assessments in issue within 30 days, as required by Code of Ala. 1975, ' 40-2A-7(b)(5)a. The final assessments were entered on July 28, 2000. The Taxpayer appealed on September 28, 2000, more than 30 days after entry of the final assessments.

The Taxpayer argues that the Department did not mail the final assessments to him until September 1, 2000, after the 30 day appeal period had expired. The Department responded that the final assessments were timely mailed by certified mail, but were returned by the Postal Service marked **Unclaimed.** They were then remailed by first class U. S. Mail on August 31, 2000.

The Department was directed to provide a copy of the certified mail envelope addressed to the Taxpayer that was returned as unclaimed. The Department responded that it does not retain such envelopes. However, the Department presented other evidence showing that it timely mailed the final assessments by certified mail to the Taxpayer-s last known address, as required by Code of Ala. 1975, ' 40-2A-7(4)(c). That evidence is as follows.

The Department entered preliminary assessments against the Taxpayer in March 2000. The preliminary assessments were mailed to the Taxpayer at his last known address - 1412 Polaris Avenue, Mobile, Alabama 36693. The Taxpayer received the preliminary assessments and responded to the Department by letter dated April 5, 2000.

As indicated, the final assessments were entered on July 28, 2000. They were numbered 205802 by the Department for tracking purposes. Postal Service Form 3877 maintained by the Department shows that the final assessments were mailed by certified mail to the Taxpayer at his Polaris Avenue address on the date they were entered, July 28, 2000.

A notation on the Department's computer records indicates that the certified mail envelope containing the final assessments was unclaimed by the Taxpayer and returned to the Department on August 31, 2000. The Department remailed the final assessments to the Taxpayer by first class U.S. mail, again to the Taxpayer's last known address. The envelope in which the final assessments were remailed is postmarked September 1, 2000, and was received by the Taxpayer at his Polaris Avenue address in due course.

The Department is required to mail all final assessments over \$500 by certified mail to a taxpayer's last known address, return receipt requested. Code of Ala. 1975, ' 40-2A-7(b)(4)c. What is the legal effect if the Department complies with the statute, but the taxpayer fails to claim the assessment?

The above issue was previously addressed by the Alabama Court of Civil Appeals in *Williams v. State, Dept. of Revenue*, 578 So.2d 1345 (Ala.Civ.App. 1991). In *Williams*, the Department mailed a final assessment by certified mail to Williams' last known

address. The Postal Service attempted delivery, and subsequently returned the assessment to the Department as unclaimed. The Department remailed the assessment to Williams, who subsequently appealed outside of the 30 day appeal period. The Court affirmed the circuit court's dismissal of the appeal, as follows:

Williams contends that the intent of this section is for the taxpayer to receive actual notice, not just for the notice to be mailed. However, this Court must give effect to the clearly expressed intent of the Legislature. *Ex parte, Holladay*, 466 So.2d 956 (Ala. 1985). Clearly, the language of the statute requires only that the notice be mailed to the last known address and requires no proof of actual receipt of the notice. In addition, although Williams contends that he did not receive the September 12, 1989 notice, and receipt of the notice is not required, the record indicates that notice of the certified mail was delivered twice to his last known address.

Williams, 578 So.2d, at 1345.

This case is identical in substance to *Williams*. The Department complied with '40-2A-7(b)(4)c. when it mailed the final assessments by certified mail, return receipt requested, to the Taxpayer's last known address. The Taxpayer apparently failed to claim the certified mail letter. He failed to do so to his own detriment. A taxpayer cannot refuse to claim a final assessment delivered by certified mail and thereby avoid the mandatory 30 day appeal deadline required by '40-2A-7(b)(5)a. That 30 day appeal period is jurisdictional. *Dansby v. State, Dept. of Revenue*, 560 So.2d 1066 (Ala.Civ.App. 1990).

The Department's motion to dismiss is granted. This appeal is dismissed from the Administrative Law Division docket.

The Taxpayer may, however, pay the final assessments in full and then petition for a refund.

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This Order Dismissing Appeal may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, ' ' 40-2A-9(b) and (g) and Dept. Reg. 810-14-1-.24(3).

Entered November 28, 2000.