

AH1 LINDEN LUMBER REAL ESTATE, LLC §  
P.O. BOX 480369  
LINDEN, AL 36748, §

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

Petitioner,

§

DOCKET NO. ADV. 09-1002

v.

§

STATE OF ALABAMA §  
DEPARTMENT OF REVENUE.

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

This appeal involves a disputed abatement of ad valorem taxes issued by the Linden City Council. After reviewing the abatement, the Revenue Department advised the Linden City Council by letter dated August 21, 2009 that it should rescind the abatement. It also advised the Marengo County Revenue Commissioner on that date that the abatement was not valid, and that it should assess the Petitioner's real and personal property in the County at the full millage rate.

The Petitioner deemed the Department's August 21, 2009 letters to in substance constitute a denial of the abatement by the Department. It consequently appealed to the Administrative Law Division.

The Department has moved to dismiss the Petitioner's appeal on three grounds. The Department first contends that the sole authority to grant or deny an abatement is with the City of Linden, citing Code of Ala. 1975, §40-9B-5(a) and the Administrative Law Division's ruling in *ABC Rail Products Corp. v. State of Alabama*, S. 94-393 (Admin. Law Div. 1995). It argues that because it has no authority to deny the abatement, there is no Department action that is subject to review.

The Department next contends that the Administrative Law Division does not have jurisdiction to hear the Petitioner's appeal based on Code of Ala. 1975, §40-2A-2(2), which

specifies that the Taxpayers' Bill of Rights and Uniform Revenue Procedures Act, §40-2A-1, et seq., shall not apply to "the assessment of ad valorem taxes on real or personal property which is administered by the various counties of the State of Alabama. . . ."

The Department's third argument is related to its first argument. It contends that it "merely advised Marengo County and the City of Linden" that the abatement was improper. That is, the Department claims that it has taken no action adverse to the Petitioner from which the Petitioner can appeal to the Administrative Law Division.

The jurisdictional issue will be addressed first. As indicated, §40-2A-2(2) provides in pertinent part that nothing in Chapter 2A of Title 40 shall "apply to the assessment of ad valorem taxes on real or personal property which is administered by the various counties of the state of Alabama, . . ."

The above provision prohibits a taxpayer from appealing an assessment of ad valorem tax to the Administrative Law Division, among other things. In this case, however, the Petitioner is not appealing from an assessment of ad valorem taxes. Rather, it is appealing from the fact that the Department wrote letters to (1) the City of Linden City Council notifying the Council that it "should rescind the abatement that was erroneously granted," and (2) the Marengo County Revenue Commission notifying the Commissioner that the subject abatement was erroneously granted, and that the Commissioner should "assess the real and personal property of (the Petitioner) at the full millage rate."

The Petitioner was entitled to appeal those actions to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-8(a), which provides that "[a]ny taxpayer aggrieved by any act or proposed act . . . by the department shall be entitled to . . . "

appeal to the Administrative Law Division. The above letters clearly constitutes an act by the Department from which the Petitioner can appeal to the Administrative Law Division.

The Department also argues that it is not authorized to deny the abatement, citing *ABC Rail Products*. I agree that the Department cannot deny an abatement, but that fact is not grounds to dismiss the Petitioner's appeal.

The Department's third argument, i.e., that it has taken no action adverse to the Petitioner, is adequately addressed above. The letters sent to the City of Linden and the Marengo County Revenue Commissioner were clearly disputed acts by the Department from which the Petitioner can appeal.

The Department's motion to dismiss is denied.

I note, however, that even if the Administrative Law Division finds that the Department did not have authority to deny the abatement, which the Department concedes, and thus improperly wrote the letters in issue, there is a question as to what relief the Administrative Law Division can grant the Petitioner. The Division can rule that the Department improperly sent the letters, but the Division does not have jurisdiction to order the Linden City Council to reinstate the abatement or the Marengo County Revenue Commission to recognize the abatement.<sup>1</sup> Doing so would affect the assessment of real property tax by the County, which, as discussed, the Administrative Law Division is without jurisdiction to do pursuant to §40-2A-2(2).

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<sup>1</sup> This assumes that the City Council and the Revenue Commissioner took the Department's "advice."

A copy of the Department's Answer is enclosed with the Petitioner's copy of this Order. The matter is set for hearing at **10:00 a.m., February 25, 2010** at the Business Center of Alabama Building, 2 North Jackson Street, Suite 301, Montgomery, Alabama. The parties should be prepared to address the issue set out in the preceding paragraph at the hearing. The parties will also be allowed to file post-hearing briefs, if necessary.

Entered January 21, 2010.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: Lionel C. Williams, Esq.  
Robert E. L. Gilpin, Esq. (w/enc.)  
Bill Bass