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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. INC. 09-1130

v.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER DISMISSING APPEAL

This matter began as an appeal by the Taxpayer from a final assessment of 2000 income tax. The Taxpayer failed to file a 2000 Alabama income tax return. The Department received IRS information indicating that the Taxpayer received lawsuit settlement income of \$50,000 in 2000, and was thus required to file an Alabama return for that year. It consequently assessed the Taxpayer in July 2004 for the tax due, plus penalties and interest, based on the IRS information. The Taxpayer timely appealed to the Administrative Law Division on August 9, 2004. The case was docketed as Inc. 04-700.

The Taxpayer subsequently submitted a 2000 return, but failed to report the settlement income. The Department requested a copy of the Taxpayer's W-2 from Capitol Chevrolet. A Preliminary Order was entered on October 6, 2004 directing the Taxpayer to submit the W-2 to the Administrative Law Division by November 5, 2004.

The Taxpayer failed to submit the W-2 by the above date, and a Second Preliminary Order was entered on November 9, 2004 directing the Taxpayer to submit the W-2 by November 26, 2004. The Order further stated that if the W-2 was not received by the above date, the 2000 final assessment would be affirmed. Both Preliminary Orders were mailed to the address listed on the Taxpayer's notice of appeal - 3536 Dee Drive, Montgomery, AL 36116.

The Taxpayer failed to submit the W-2 by the above date, and a Final Order was entered on December 9, 2004 affirming the final assessment. That Order was also mailed to the 3536 Dee Drive address.

The Taxpayer timely applied for a rehearing on December 10, 2004 and submitted a copy of his 2000 amended federal return. The Department was directed on December 13, 2004 to review the return and respond. The Department responded that it could not accept the amended federal return without a copy of the W-2. The response is dated January 31, 2005, but was not filed with the Administrative Law Division until January 28, 2008.

After receiving the Department's response, the Administrative Law Division issued a Second Preliminary Order on Taxpayer's Application for Rehearing on January 29, 2008 directing the Taxpayer to submit the W-2 by February 29, 2008. The Taxpayer again failed to submit the W-2, and a Final Order on Rehearing was entered on March 4, 2008 affirming the December 9, 2004 Final Order. Both Orders were mailed to the Taxpayer's 3536 Dee Drive address. The March 4, 2008 Final Order on Rehearing was not appealed within 30 days, as required by Code of Ala. 1975, §40-2A-9(g).

On November 18, 2009, the Taxpayer filed a notice of appeal with the Administrative Law Division concerning a federal offset letter he had received dated October 23, 2009. The letter related to his 2000 liability. The case was docketed as Inc. 09-1130.

The Taxpayer claims that he "would not have deliberately ignored this request for the W-2 from Capital Chevrolet." He explained that he had moved from the Dee Drive address in March 2006, and never received any correspondence from the Administrative Law Division after the December 13, 2004 Preliminary Order on Rehearing.

As indicated above, the Taxpayer was directed in his previous appeal by Orders dated October 6, 2004, November 9, 2004, and December 9, 2004 to submit the Capital Chevrolet W-2. Those Orders were mailed to the Taxpayer's Dee Drive address before he moved in 2006. He failed to submit the W-2 at any time during that appeal.

The Administrative Law Division is required to mail all correspondence to a taxpayer's last known address in envelopes marked "return receipt requested." If a piece of correspondence is undeliverable, it is returned to the Division with a notice from the U. S. Postal Service. No correspondence mailed to the Taxpayer at the Dee Drive address was ever returned. Consequently, the Administrative Law Division properly mailed the correspondence to the Taxpayer's last known address, and was unaware that the Taxpayer had moved in 2006.

The Department has moved to dismiss the Taxpayer's appeal of the offset letter because he failed to appeal the March 4, 2008 Final Order. I must agree. The Taxpayer's appeal is dismissed for lack of jurisdiction. The Administrative Law Division also cannot intervene in collection matters, and thus cannot review the correctness of a federal offset letter, which is a collection action. Code of Ala. 1975, §40-2A-8(c).

The Taxpayer may, however, pay the final assessment in full and then petition for a refund. If the refund is denied, the Taxpayer may appeal to the Administrative Law Division or to circuit court pursuant to Code of Ala. 1975, §§40-2A-7(c)(5)a. and b., respectively.

The Administrative Law Division sympathizes with the Taxpayer, but it does not have jurisdiction to hear the Taxpayer's appeal. This Final Order Dismissing Appeal can be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §§40-2A-9(b) and (g) and Department Reg. 810-14-1-.24(3).

Entered February 1, 2010.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

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