

CHRISTOPHER A. & ANDREA SMITH §
593 WILKIE ROAD
ASHLAND, AL 36251, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers, §

DOCKET NO. INC. 10-535

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER DISMISSING APPEAL

This appeal involves final assessments of 2002 and 2003 income tax entered against the above Taxpayers. A Preliminary Order was entered on July 19, 2010 directing the Taxpayers to file returns for the subject years by September 3, 2010.

The Department has now filed a motion to dismiss the appeal because it was not timely filed with the Administrative Law Division within 30 days, as required by §40-2A-7(b)(5)a. The motion is granted.

A taxpayer must appeal a final assessment within 30 days. Code of Ala. 1975, §40-2A-7(b)(5)a. The 30 day appeal period must be strictly followed. *Dansby v. State, Dept. of Revenue*, 560 So.2d 1066 (Ala. Civ. App. 1990). If the appeal is not timely filed, "the appeal shall be dismissed for lack of jurisdiction." Code of Ala. 1975, §40-2A-7(b)(5)c.

The Department entered the final assessments in issue on April 27, 2010. The Taxpayers' notice of appeal was postmarked on May 27, 2010, and was addressed to the Department's Individual and Corporate Income Tax Section. That Section stamped the appeal as received on June 3, 2010. The appeal was forwarded to the Administrative Law Division on June 11, 2010.

The Taxpayers' appeal was not actually received by the Administrative Law Division within the required 30 days. Code of Ala. 1975, §40-1-45 provides, however, that if a

document required to be filed within a certain time is postmarked by the U.S. Postal Service before the time deadline, the document shall be deemed as timely filed. The statute also requires that the document must be “properly addressed to the agency, officer, or office with which the” document is required to be filed. See, Code of Ala. 1975, §40-1-45(a)(2)b.

In this case, the Taxpayers’ appeal was postmarked within the required 30 days. Unfortunately for the Taxpayers, it was addressed to the Department’s Individual and Corporate Income Tax Section, not to the Administrative Law Division, i.e., the office in which it was required to be filed.¹ Section 40-1-45 thus does not apply.

Because the §40-1-45 “mailbox” rule does not apply, and because the Taxpayers’ appeal was not actually filed with the Administrative Law Division within 30 days, the Taxpayers’ appeal must be dismissed for lack of jurisdiction. The Taxpayers may, however, pay the final assessments in full and then petition for refunds. If the refunds are denied, the Taxpayers 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.

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 July 23, 2010.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: David E. Avery, III, Esq.

¹ The appeal instructions on the back of the final assessments clearly stated that any appeal must be filed with the Administrative Law Division. The address of the Administrative Law Division was also provided.

Chris & Andrea Smith (w/enc.)
Tony Griggs