

ALVIN D. BURTON  
120 ENCLAVE AVENUE  
CALERA, AL 35040-3725,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 10-634

### FINAL ORDER DISMISSING APPEAL

This appeal involves a final assessment of 2005 income tax. The Revenue Department has moved to have the appeal dismissed because the Taxpayer failed to timely appeal the final assessment in issue within 30 days, as required by Code of Ala. 1975, §40-2A-7(b)(5). 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 2005 final assessment in issue on May 25, 2010. The Taxpayer's appeal letter is dated July 20, 2010. It was received by the Administrative Law Division on July 21, 2010, after the 30 day appeal period had expired. The envelope in which the appeal was received also was not postmarked by the U. S. Postal Service within 30 days, as required for the appeal to be considered timely filed under the "mailbox" rule at Code of Ala. 1975, §40-1-45(a).

The envelope does, however, bear a postage meter imprint date of June 11, 2010. Section 40-1-45(b) provides that the "mailbox" rule may apply to postmarks not made by the U. S. Postal Service, but only to the extent allowed by the Department. Department

Reg. 810-1-5-.01(4) reads as follows:

Articles delivered by the United States Postal Service which do not bear a postmark affixed by the United States Postal Service will qualify under the provisions of paragraph (1) above if the article bears a postage meter imprint affixed in accordance with applicable regulations promulgated by the United States Postal Service (Part 144, Domestic Mail Manual) indicating the article was mailed within the time permitted by paragraph (1) above.

The Administrative Law Division has attempted to but cannot locate “Part 144, Domestic Mail Manual.” Section 4.5.2 of the Manual does provide, however, that if an envelope bears a postage meter stamp, the envelope must be mailed on the date the envelope is stamped.

As indicated, the envelope in issue bore a postage meter stamp date of June 11, 2010. But the letter could not have been mailed on that date because the appeal letter itself is dated July 20, 2010. The “mailbox” rule thus does not apply.

The Taxpayer’s appeal is dismissed for lack of jurisdiction. 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.

As suggested in the Department’s Answer, at paragraph 4, the Taxpayer may also file a 2005 return, with a W-2 and all supporting records, in which case the Department will review the return and documents and respond. If the Taxpayer wishes to do so, he must apply for a rehearing within 15 days of this Final Order. He should also submit the return and records with the application, or, if the application is timely, he may request additional time to submit the return and records to the Administrative Law Division. They will then be submitted to the Department for review and response.

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 August 3, 2010.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: Gwendolyn B. Garner, Esq.  
Alvin D. Burton (w/enc.)  
Barry Estes