

SOUTHEASTERN MUSIC
GALLERY, INC.
5500 OLD MONTGOMERY HWY.
TUSCALOOSA, AL 35405-4922,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§
§
§
§
§
§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 12-219

**PRELIMINARY ORDER DENYING
DEPARTMENT'S MOTION TO DISMISS**

This appeal involves a final assessment of State sales tax for April 2008 through March 2011 entered against the above Taxpayer. The Department has 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 denied.

The Department entered the final assessment in issue on December 28, 2011. On January 25, 2012 (postmark date), the Taxpayer mailed its appeal letter to the Secretary of the Revenue Department's office. That office received the notice on January 26, 2012 and forwarded it to the Sales and Use Tax Section on February 3, 2012. That Division forwarded the appeal to the Administrative Law Division, which received it on February 9, 2012.

The timeliness of a taxpayer's appeal was also in issue in *Hyche v. State of Alabama*, Docket Inc. 06-234 (Admin. Law Div. 5/11/2006). As in this case, the taxpayer in *Hyche* sent his notice of appeal to a Division of the Department other than the Administrative Law Division. That Division received the appeal within the 30 day appeal period, but did not forward it to the Administrative Law Division until after the 30 day appeal period had expired. The Administrative Law Division denied the Department's motion.

The Department received the notice of appeal within the 30 day appeal period provided in Code of Ala. 1975, §40-2A-7(b)(5)a. The Administrative Law Division has consistently treated an appeal timely filed with another Division of the Department as having been timely filed with the Administrative Law Division. *Snoddy v. State of Alabama, Inc.* 05-421 (Admin. Law Div. 4/20/05); *Patel v. State of Alabama, Inc.* 04-1040 (Admin. Law Div. 1/31/05); *Johnson v. State of Alabama, Inc.* 03-275 (Admin. Law Div. 7/29/03).

The Individual Hearings Section could have forwarded the appeal to the Administrative Law Division on the day it was received, in which case there would be no question that the appeal was timely. The fact that the appeal was not forwarded to the Administrative Law Division until after the 30 day appeal period had expired should thus be of no consequence. Treating the appeal as timely under the circumstances also conforms to Code of Ala. 1975, §40-2A-2(a), which specifies that the Taxpayers' Bill of Rights and Uniform Revenue Procedures Act, Code of Ala. 1975, §40-2A-1 et seq., "shall be liberally construed to allow substantial justice." Consequently, the Taxpayer's appeal was timely.

Hyche at 1 – 2.

In this case, the Department received the Taxpayer's appeal within the 30 day appeal period. The appeal will thus be treated as timely filed. The Department should file its Answer in the case within the extended 90 days allowed by Code of Ala. 1975, §40-2A-9(c). Appropriate action will then be taken.

Entered March 7, 2012.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Margaret Johnson McNeill, Esq.
Gary W. Jones (w/enc.)
Joe Walls
Mike Emfinger