

STAR IMPORTERS & WHOLESALERS §
2043 MOUNTAIN INDUSTRIAL BLVD.
TUCKER, GA 30084-6308, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer, §

DOCKET NO. MISC. 13-420

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

**ORDER DENYING TAXPAYER'S
MOTION TO DISMISS**

This appeal involves disputed final assessments of State and County tobacco tax entered by the Department against the above Taxpayer for the periods January 2007 through July 2012 and September 2009 through July 2012, respectively. The case is set for hearing on October 3, 2013.

The Taxpayer filed a motion to dismiss the final assessment in this case because it claims that the Department failed to timely file its Answer within 90 days, as provided in Code of Ala. 1975, §40-2A-9(c). A copy of the Department's response is enclosed with the Taxpayer's copy of this Order.

The Administrative Law Division and taxpayers have no mechanism or method to verify when a notice of appeal from the Administrative Law Division is received by the Legal Division, other than the Legal Division's own date stamp. The Administrative Law Division has in prior cases assumed that the Legal Division received the notice on the date the Administrative Law Division issued the notice. But the applicable statute allows the Legal Division 30 days "from receipt of notice" to respond, not 30 days from the date of the notice. See, Code of Ala. 1975, §40-2A-9(c).

The Administrative Law Division has held in prior cases that granting relief to a taxpayer was mandatory if the Department failed to file its Answer within 90 days. But the Administrative Law Division reconsidered its position and now maintains that granting relief in such cases is discretionary with the Administrative Law Division, not mandatory.

The Administrative Law Division has also held that the 90 day Answer period is mandatory. On reconsideration, however, Reg. 810-14-1-.24 gives the Administrative Law Division discretion to grant a taxpayer the requested relief. Granting relief is thus discretionary, not mandatory. If there is reasonable cause or a plausible explanation why the Department did not timely file its Answer, then the Administrative Law Division, in its discretion, may not grant a taxpayer relief. If, however, there is no reasonable cause why the Department failed to comply with §40-2A-9(c), relief will be granted.

JSC Brewton, Inc. v. State of Alabama, Corp. 07-554 (Admin. Law Div. Order Denying Taxpayer's Motion to Dismiss 12/3/2007) at 3.

In this case, the Administrative Law Division's notice to the Legal Division was dated May 6, 2013. The Department attorney handling the case received the notice on that date. He requested a 60 day extension to file the Department's Answer on June 5, 2013, or the 30th day after receiving the notice. The request was granted. The Department filed its Answer with the Administrative Law Division on August 5, 2013, or on the 90th day allowed for filing the Answer. The Answer was thus timely. The Taxpayer's Motion to Dismiss is denied. The case will be heard as scheduled on October 3, 2013.

Entered September 17, 2013.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

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