

DAVID FREDRICK AND
CLEMENTINE S. DE ROODE
386 Bartram Road
Riverside, IL 60546,

Taxpayers,

vs.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 94-399

FINAL ORDER

The Revenue Department assessed income tax against David Fredrick and Clementine S. De Roode (jointly "Taxpayers") for the years 1989 and 1990. David Fredrick De Roode (individually "Taxpayer") appealed to the Administrative Law Division and a hearing was conducted on January 3, 1995. The Taxpayer represented himself at the hearing. Assistant counsel Dan Schmaeling represented the Department.

This case involves two issues. First, did the Taxpayer timely appeal the final assessments in issue to the Administrative Law Division within 30 days as required by Code of Ala. 1975, §40-2A-7(b)(5)a. Second, did the Department properly disallow various deductions claimed by the Taxpayers on their returns for the subject years.

Concerning the timeliness of the appeal, Code of Ala. 1975, §40-2A-7(b)(5)a. provides that a taxpayer must appeal a final assessment within 30 days. An appeal shall be deemed timely filed if it is postmarked within the 30 day period. See, Code of Ala. 1975, §40-1-45. The timely filing of an appeal is jurisdictional,

and if an 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 final assessments in issue were entered on September 6, 1994. The envelope in which the Taxpayer's notice of appeal was mailed to the Administrative Law Division is postmarked October 7, 1994, outside of the 30 day appeal period. Consequently, the Taxpayer's appeal must be dismissed.

The Taxpayer argues that the appeal should not be dismissed because the Department mailed the final assessments to the wrong address. The final assessments were mailed to the Taxpayer's last known address in Chicago, Illinois. However, at the time the final assessments were mailed, the Taxpayer had already moved to Riverside, Illinois. Consequently, the final assessments were not received by the Taxpayer until shortly before the 30 day appeal period expired.

I sympathize with the Taxpayer's situation. However, Alabama law requires only that a final assessment must be mailed to a taxpayer's last known address. Code of Ala. 1975, §40-2A-7(b)(4)c.

See also, Morse v. IRS, 635 F.2d 701; U. S. v. Eisenhardt, 437 F.Supp. 747; and generally 26 U.S.C.A. §6212. The Department complied with the law when it mailed the final assessments to the Taxpayer's last known address in this case. Consequently, the appeal must be dismissed as indicated above. In any case, the Taxpayer concedes that he received the final assessments "sometime"

prior to October 7, 1994. If the Taxpayer had mailed his notice of appeal one day earlier on October 6, 1994, the appeal would have been timely filed. Consequently, the Taxpayer must share some responsibility for failing to timely appeal.

Based on the above, the second issue in dispute is moot. However, the Taxpayer presented some documents at the January 3, 1995 hearing (and suggested that he had more) verifying the disputed deductions. Consequently, although his appeal of the final assessments in issue must be dismissed, the Taxpayer may still contest the tax in issue by paying the tax plus interest in full and then filing a petition for refund as provided at Code of Ala. 1975, §40-2A-7(c)(1). If the Taxpayer follows that procedure, he would be entitled to a refund of tax relating to all deductions that he could properly verify.

The above considered, the Taxpayer's appeal is dismissed. This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §§40-2A-9(b) and (g).

Entered on January 9, 1995.

BILL THOMPSON
Chief Administrative Law Judge