

JAMES P. & JOY A. BLOOM  
3505 Mill Springs Road  
Birmingham, AL 35223,

Taxpayers,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 02-340

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

The Revenue Department has moved to have this appeal dismissed because the Taxpayers failed to timely appeal the final assessments in issue within 30 days, as required by Code of Ala. 1975, ' 40-2A-7(b)(5).

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 1994 and 1995 final assessments in issue on March 29, 2002. The Taxpayers had until Monday, April 29, 2002, to file their appeal.<sup>1</sup> The Taxpayers' appeal letter was delivered to the Administrative Law Division through the Department's internal mail delivery system on May 2, 2002, three days after the filing deadline. The appeal letter was in a four-inch by nine-

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<sup>1</sup>The thirtieth day fell on Sunday, April 28. Consequently, the last day became the next working day, Monday, April 29, by operation of law. Code of Ala. 1975, ' 1-1-4; see also, Dept. Reg. 810-1-5-.01.

inch envelope that did not have a stamp or postmark on it.

The Department is currently outsourcing its mail-handling with a company in Georgiana, Alabama. Because the Taxpayers' appeal came through the Department's mail system, the four by nine envelope in which the appeal letter was delivered to the Administrative Law Division was presumably mailed by the Taxpayers in a larger envelope that was discarded in Georgiana.

Code of Ala. 1975, ' 40-1-45 provides that if a document is mailed in the United States mail, and is postmarked on or before the due date, it shall be considered as having been timely filed. The ' 40-1-45 mailbox rule also applies to deliveries by Federal Express, United Parcel Service, or any other private delivery service approved by the IRS. See, Dept. Reg. 810-1-5-.01(8)(a) and (b), 26 U.S.C. ' 7502, and IRS Notice 97-26 (List of Designated Private Delivery Services).

If the Taxpayers have a return receipt or other evidence showing that their appeal was timely mailed to the Administrative Law Division through the U.S. mail or a qualified private delivery service, they should provide that evidence to the Administrative Law Division by June 28, 2002. An appropriate Order will then be entered. Otherwise, the Taxpayers' appeal must be dismissed for lack of jurisdiction. If the Taxpayers' appeal of the final assessments is dismissed, they may still pay the amounts in issue and petition for a refund.

Entered August 16, 2002.

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BILL THOMPSON

Chief Administrative Law Judge

bt:dr

cc: Margaret Johnson McNeill, Esq.  
James P. Bloom, D.D.S.  
Kim Herman