

MEADWESTVACO COATED BOARD, INC.
COURTHOUSE PLAZA NE
DAYTON, OH 45463-0001,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§ STATE OF ALABAMA
DEPARTMENT OF REVENUE
§ ADMINISTRATIVE LAW DIVISION

§ DOCKET NO. CORP. 05-565

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FINAL ORDER DENYING DEPARTMENT'S APPLICATION FOR REHEARING

A Final Order was entered in this case on August 11, 2005 dismissing the final assessment in issue because the Department failed to file its Answer in the case within 90 days, as required by Code of Ala. 1975, §40-2A-9(c). The Department applied for a rehearing, arguing that the Administrative Law Division had abused its discretion and exceeded its statutory authority. The application is denied.

The requirement in §40-2A-9(c) that the Department must file an Answer within 30 days was enacted as part of the Uniform Revenue Procedures Act in 1992. Recognizing that administrative delays within the Department would in some cases occur, the drafters of the Uniform Act included a provision that allows the administrative law judge to grant the Department's Legal Division additional time, "not to exceed 60 days," within which to file its Answer.

The Uniform Act took effect in October 1992. In 1993, the Department promulgated Reg. 810-14-1-.24, entitled "Appeals to the Administrative Law Division – Authority of Administrative Law Judge." Paragraph (3) of the regulation, which is still in effect, addresses the authority of the ALJ, and reads in part – "If a taxpayer or the Department fails to comply with any statute or regulation concerning appeals to the

Administrative Law Division. . ., the Administrative Law Judge shall have discretion to dismiss the appeal, grant all or part of the relief sought by the taxpayer, or take any other action appropriate under the circumstances." That Department regulation authorizes the administrative law judge to grant a taxpayer relief if the Department fails to file an Answer within 90 days.

In *State of Alabama v. Bishop-Parker Furniture Company, Inc.*, S. 93-252 (Admin. Law Div. Order Granting Relief 3/31/04; Final Order on Rehearing 6/21/94), the Administrative Law Division for the first time granted a taxpayer relief because the Department failed to file its Answer within the required 90 days. The Final Order in the case reads in part as follows:

The clear intent of the Taxpayers' Bill of Rights and Uniform Revenue Procedures Act, of which §§40-2A-9(b) and (c) are a part, is to provide "equitable and uniform procedures for the operation of the department and for all taxpayers when dealing with the department." See Code of Ala. 1975, §40-2A-2(1). Certainly the Legislature did not intend nor would it be equitable to penalize a taxpayer for failing to comply with a statute or regulation concerning administrative appeals, but not hold the Department to the same standard.

The Legislature required the Department to answer within 30 days to protect taxpayers from undue delay by the Department. However, if a taxpayer cannot be granted relief when the Department fails to answer within the required 30 days, or at least within the additional 60 days allowed by §40-2A-9(c), then in practical effect the time limits imposed by that section would be meaningless. The Department could ignore the time requirements without penalty.

In light of the above, §40-2A-9(b) must be construed to allow the administrative law judge authority to grant relief to either party where the opposing party fails to comply with a statute, regulation or preliminary order concerning an appeal before the Administrative Law Division, either by dismissing the taxpayer's appeal if the taxpayer fails to comply, or by granting the relief sought by a taxpayer if the Department fails to comply. That legislative intent is recognized in Department Reg. 810-14-1-.24(3), which specifies that if either party fails to comply "the Administrative Law Judge shall have discretion to dismiss the appeal, grant all or part of the

relief sought by the taxpayer, or take any other action appropriate under the circumstances."

Bishop-Parker, Order Granting Relief at 3, 4.

The Department did not appeal *Bishop-Parker* to circuit court. The Administrative Law Division has also granted the taxpayer relief in seven other cases since 1994 because the Department failed to timely file its Answer. None of those cases were appealed. As stated in *Plantation Oaks of Alabama, Inc. v. State of Alabama*, S. 03-1041 (Admin. Law Div. 3/23/2004), "[i]f the Department believes that the Administrative Law Division has misconstrued §40-2A-9(c), it should appeal to circuit court."¹

Even if the ALJ had discretion to accept an Answer after 90 days, dismissing the final assessment in this case did not constitute an abuse of that discretion. While the parties discussed the case in conference on May 13, 2005, they did not agree to hold this appeal in abeyance pending settlement discussions. The Department was also aware that an Answer was still due because it filed a request for a 60 day extension on June 3, 2005, after the May 13 conference. Also, the Department was well aware of the consequences of not timely filing an Answer because the Administrative Law Division has recently granted taxpayers relief in two other cases for the same reason.

¹ The Department may also seek to have the statute amended. In that case, however, the Administrative Law Division would have no recourse if the Department failed or refused to file an Answer or take other needed action as directed by the Administrative Law Division. Under the current statute, the Administrative Law Division has been forced to dismiss an assessment or grant a refund in several cases because the Department, despite repeated requests by the Administrative Law Division, failed to recompute a taxpayer's liability and notify the Administrative Law Division of the adjusted tax or refund due. If relief could not be granted in such cases, some appeals would remain undecided on the Administrative Law Division's docket forever.

This Final Order Denying Department's Application for Rehearing may be appealed to circuit court within 30 days from the date of this Order pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered September 20, 2005.

BILL THOMPSON
Chief Administrative Law Judge