

JOSEPH SCHANIEL  
530 COUNTY ROAD 343  
STONEWALL, MS 39363-9227,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 06-340

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

This appeal involves a final assessment of 1999 Alabama income tax 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 January 30, 2006. The Taxpayer's notice of appeal was mailed to the Department's Individual and Corporate Tax Division in a pre-addressed envelope the Department had sent to the Taxpayer with the final assessment. The envelope was postmarked on February 11, 2006, and was received by the Individual and Corporate Tax Division on February 14, 2006. That Division forwarded the appeal to the Administrative Law Division on March 31, 2006.

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 Department could have immediately forwarded the appeal to the Administrative Law Division, in which case it would have been actually received by that Division within 30 days. The Department cannot hold a taxpayer's appeal until the 30 day appeal period expires, and then move to dismiss the appeal as untimely.

The Department has been granted an extension to July 5, 2006 to file its Answer. The case will then be set for hearing, or other appropriate action will then be taken.

Entered April 18, 2006.

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BILL THOMPSON  
Chief Administrative Law Judge