

GARRY PETTUS	§	STATE OF ALABAMA
D/B/A OFF ROAD TALLADEGA		DEPARTMENT OF REVENUE
MUD RACING TRACK	§	ADMINISTRATIVE LAW DIVISION
650 AUTUMN LANE		
TALLADEGA, AL 35160-6357,	§	
Taxpayer,	§	DOCKET NO. S. 07-573
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

FINAL ORDER DISMISSING APPEAL

This appeal involves disputed final assessments of State and local sales tax for June 2003 through June 2006. The Revenue Department has moved to have the appeal dismissed because the Taxpayer failed to timely appeal the final assessments in issue within 30 days, as required by Code of Ala. 1975, §40-2A-7(b)(5). The motion is granted.

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 final assessments in issue on April 24, 2007. The Taxpayer's appeal letter was postmarked June 8, 2007, and was received by the Administrative Law Division on June 11, 2007. The appeal was thus not timely filed within 30 days; nor can it be treated as timely mailed within 30 days as allowed by Code of Ala. 1975, §40-1-45. To be treated as timely mailed, the appeal must be postmarked within the required 30 days.

The Taxpayer claims in his notice of appeal that he did not receive the final assessments until June 7, 2007. He enclosed a copy of the envelope in which the final

assessments were mailed, which shows a postmark date of June 6, 2007. The Administrative Law Division inquired with the Department, and was informed that the final assessments were previously mailed to the Taxpayer by certified mail, but that they were returned marked "unclaimed."

A taxpayer cannot refuse to claim a final assessment served by certified mail, and thereby avoid the 30 day appeal deadline. *Williams v. State, Dept. of Revenue*, 578 So.2d 1345 (Ala. Civ. App. 1991); see also, *Robert A. Beach v. State of Alabama, Inc.* 00-615 (Admin. Law Div. O.D.A. 11/28/00). For federal cases on point, see, *Erhard v. C.I.R.*, 87 F.3d 273 (1996); *Patman and Young Professional Corp. v. C.I.R.*, 55 F.3d 216 (1995).

The above considered, the Taxpayer's appeal is dismissed for lack of jurisdiction. The Taxpayer may, however, pay the final assessments in full and then petition for refunds. If the refunds are denied, the Taxpayer may appeal to the Administrative Law Division or to circuit court pursuant to Code of Ala. 1975, §§40-2A-7(c)(5)a. and b., respectively.

This Final Order Dismissing Appeal can be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §§40-2A-9(b) and (g) and Department Reg. 810-14-1-.24(3).

Entered August 28, 2007.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

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