

COASTAL COUTURE, LLC	§	STATE OF ALABAMA
P.O. BOX 2170		DEPARTMENT OF REVENUE
ORANGE BEACH, AL 36561,	§	ADMINISTRATIVE LAW DIVISION
Taxpayer,	§	DOCKET NO. S. 08-817
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

**FINAL ORDER DISMISSING APPEAL**

The Department entered a final assessment of sales tax on June 23, 2008 against Tosha Corrigan, d/b/a Coastal Couture, LLC. Coastal Couture (“Taxpayer”) appealed to the Administrative Law Division on October 3, 2008 (postmark date). The Administrative Law Division notified the Taxpayer by letter dated October 8, 2008 that because the Taxpayer failed to appeal the final assessment within 30 days, as required by Code of Ala. 1975, §40-2A-7(b)(5)a., the matter had been forwarded to the Department’s Collection Services Division for collection. The Division also notified the Taxpayer that it could not intervene in collection matters. Code of Ala. 1975, §40-2A-8(c).

The Taxpayer responded that neither it nor its representative had received a copy of the final assessment, and that it was not aware of the tax due until it received a “Final Notice Before Seizure” from the Collections Division in late September 2008. The Administrative Law Division subsequently entered a Preliminary Order directing the Department to explain when and where the final assessment had been served on the Taxpayer.

The Department responded that it audited the Taxpayer for sales tax in late 2007 at its place of business at 4751 Main Street, Suite 116, Orange Beach, Alabama 36561-5865.

A copy of the final audit was also delivered to the Taxpayer at the above address in

January 2008, and an audit verification letter was mailed to the address in February 2008.

The Department entered a preliminary assessment against the Taxpayer for the subject period on March 17, 2008, and mailed it to the above Main Street address in Orange Beach. That preliminary assessment was not returned by the Postal Service. The Postal Service subsequently returned another preliminary assessment entered against the Taxpayer for a later period that had also been mailed to the Main Street address. The Postal Service returned that preliminary assessment and noted that the Taxpayer's mailing address had changed to P.O. Box 2170, Orange Beach, Alabama 36561. The Department consequently changed the Taxpayer's last known address in its computer system at that time to the above post office box address.

The Department entered the final assessment in issue on June 23, 2008, and mailed the final assessment to P.O. Box 2170, Orange Beach, Alabama 36561 by first class mail, return receipt requested, on June 24, 2008. The Postal Service returned the notice marked "unclaimed unable to forward" on July 16, 2008. The Department subsequently remailed the final assessment to the post office box in late July 2008. That notice was not returned by the Postal Service.

A hearing was conducted in the matter on July 2, 2009 for the purpose of determining if the Department had properly served the final assessment on the Taxpayer. The Taxpayer's representative was notified of the hearing, but informed the Administrative Law Division before the hearing that he no longer represented the Taxpayer.<sup>1</sup> Assistant Counsel Duncan Crow represented the Department. The Division took evidence at the

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<sup>1</sup> The representative indicated that he had attempted to contact the Taxpayer concerning the July 2 hearing, but that the Taxpayer failed to respond.

hearing establishing the facts as stated above.

The Department is required to mail a final assessment over \$500 by certified mail to the taxpayer's last known address. Section 40-2A-7(b)(4)c. The requirement that a final assessment must be mailed to a taxpayer's last known address is modeled after the federal requirement that a notice of deficiency must be mailed to a taxpayer's last known address. 26 U.S.C. §6212(b)(1). Consequently, federal authority should be followed in determining if the Department properly mailed a final assessment to a taxpayer's last known address. *Best v. State, Dept. of Revenue*, 417 So.2d 197 (Ala. Civ. App. 1981) (when an Alabama statute is modeled after a federal statute, federal authority should be followed in interpreting the Alabama statute).

If a final assessment is timely mailed to a taxpayer's last known address, actual receipt by the taxpayer is not required. Consequently, 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. ODA 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 Department must, however, exercise reasonable diligence in determining a taxpayer's last known address. In deciding if the Department has used reasonable diligence, the focus is not on whether the taxpayer notified the Department of a new or different address, but rather, on the most current information which the Department possesses. *U.S. v. Bell*, 183 B.R. 650 (S.D. FL 1995).

In this case, the Postal Service returned a preliminary assessment mailed to the Taxpayer's Main Street address with the notation that the Taxpayer's mailing address had changed to P.O. Box 2170, Orange Beach, Alabama 36561. That was the Taxpayer's last known address, and the Department thus correctly mailed the final assessment to that address. As indicated above, the fact that the Taxpayer failed to claim the final assessment cannot relieve it of liability. Also, the Final Notice Before Seizure was mailed to the post office box and duly received by the Taxpayer, which shows that the box was an active address for the Taxpayer.

Because a final assessment was correctly mailed to the Taxpayer at its last known address, and because the Taxpayer failed to appeal the final assessment within 30 days, as required by Code of Ala. 1975, §40-2A-7(b)(5)a., the Taxpayer's appeal must be dismissed for lack of jurisdiction. The Taxpayer may, however, pay the final assessment in full and then petition for a refund. If the refund is 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 may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered July 8, 2009.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: Duncan R. Crow, Esq.  
Coastal Couture, LLC  
Joe Cowen  
Mike Emfinger