

AH1 LINDEN LUMBER REAL ESTATE, LLC §
P.O. BOX 480369
LINDEN, AL 36748, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Petitioner, §

DOCKET NO. ADV. 09-1002

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER DISMISSING APPEAL

This appeal involves a disputed abatement of ad valorem tax issued by the Linden City Council. After reviewing the abatement, the Revenue Department advised the Linden City Council by letter dated August 21, 2009 that it should rescind the abatement. It also advised the Marengo County Revenue Commissioner by letter on that date that the abatement was not valid, and that it should assess the Petitioner's real and personal property in the County at the full millage rate.

The Petitioner deemed the Department's August 21, 2009 letters to in substance constitute a denial of the abatement by the Department. It consequently appealed to the Administrative Law Division.

The Department moved to dismiss the Petitioner's appeal on three grounds. The Administrative Law Division denied the motion, see January 21, 2010 Preliminary Order Denying Department's Motion to Dismiss and Setting Hearing. The Preliminary Order included the following, at 3:

I note, however, that even if the Administrative Law Division finds that the Department did not have authority to deny the abatement, which the Department concedes, and thus improperly wrote the letters in issue, there is a question as to what relief the Administrative Law Division can grant the Petitioner. The Division can rule that the Department improperly sent the letters, but the Division does not have jurisdiction to order the Linden City Council to reinstate the abatement or the Marengo County Revenue Commission to recognize the abatement. (footnote omitted) Doing so would

affect the assessment of real property tax by the County, which, as discussed, the Administrative Law Division is without jurisdiction to do pursuant to §40-2A-2(2).

A hearing was conducted on April 22, 2010. Assistant Counsel Lionel Williams represented the Department. Clinton Graves and Carla Gilmore represented the Petitioner.

The Petitioner recognized at the April 22 hearing that the Administrative Law Division does not have jurisdiction to issue an Order directing the local taxing officials to grant the abatement because the Division does not have jurisdiction concerning the valuation and assessment of ad valorem taxes administered by a county. Rather, the Petitioner stated that “[a]ll that the taxpayer would ask is that you incorporate the findings in the last paragraph of your preliminary order that the Department did not have authority to deny the abatement and that the Department improperly wrote the letters to the City of Linden and their county commissioner. That’s all we need.” T. at 5 – 6.

The Department conceded at the hearing that it was not legally authorized to deny the abatement. It argued, however, that it was within its authority in issuing the “advisory” letters to the Linden City Council and the Marengo County Revenue Commissioner.

The above quoted paragraph from the January 21, 2010 Preliminary Order stated that if the Department did not have authority to deny the abatement, then it “improperly wrote the letters in issue.” On further consideration, however, it does not necessarily follow that because the Department cannot deny an abatement, it cannot notify or advise a county taxing official that an abatement was incorrectly granted or should not be granted.

If a county taxing official is required to follow the Department’s “advice,” then such a

letter would in substance be a denial of an abatement by the Department, and thus unauthorized. But the Department contends that it does not have direct authority over county and municipal taxing officials. The following exchange occurred at the April 22 hearing:

The Court: So if the Department directs the localities to take certain action, are the localities required to follow that advice?

Mr. Williams: No, sir. No, they are not, Judge. No they are not. And we don't dispute – and counsel indicated that Your Honor apparently had already ruled on those issues. We didn't read the order that way, but we concede the fact that we do not have any direct authority over the municipalities.

T. at 6.

The above statement appears, however, to be contrary to Code of Ala. 1975, §40-2-11(a), which gives the Department of Revenue “general and complete supervision and control” over the valuation and assessment of ad valorem taxes in the State, “and of the several county tax assessors and county tax collectors, probate judges, and each and every state and county official, board, or commission charged with any duty in the enforcement of tax laws, . . .” The above statute arguably gives the Department authority over county taxing officials concerning the administration of ad valorem taxes, in which case a county official would, arguably, be required to follow the Department's directions.

My understanding is that if the Department wishes to assert its direct and full authority over a county or a county official pursuant to §40-2-11(a), it will issue a formal order asserting such control. But the Department also otherwise issues letters or memorandums to county officials which are, as in this case, only advisory. In that case, the letters issued by the Department in this case were only advisory, and thus not binding on

the County or the City of Linden.

The local officials did not follow the Department's advisory letters in this case because although the Petitioner was assessed and required to pay the 2008 ad valorem tax due, the County subsequently recognized the abatement concerning the 2009 tax year.

In any case, the parties agree that the Administrative Law Division does not have authority to order or direct any action by local taxing officials concerning the valuation and assessment of ad valorem taxes. Consequently, this case is dismissed from the Administrative Law Division docket.

This Final Order Dismissing Appeal may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered July 19, 2010.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Lionel C. Williams, Esq.
Robert E. L. Gilpin, Esq.
Bill Bass