

BOX FAMILY RESTAURANTS, LLC §
AND ITS MEMBERS, RANDALL BOX,
THURLO BOX §
5311 US HIGHWAY 231
WETUMPKA, AL 36092-3168, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

DOCKET NO. S. 11-375

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

**PRELIMINARY ORDER ON TAXPAYER'S
APPLICATION FOR REHEARING**

This appeal involves final assessments of State sales tax for 1/2010 through 4/2010 and withholding tax for the quarter ending 3/31/2010. A Final Order Dismissing Appeal was entered on June 8, 2011 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).

Thurlo Box ("Taxpayer") has timely applied for a rehearing. The final assessments in issue were entered on October 6, 2010, and were mailed to the Taxpayer's son, Randall Box, at 125 Deer Track Court, Wetumpka, AL 36093-2226.¹ The Taxpayer claims that he did not receive the assessments until April 19, 2011. He filed his notice of appeal on May 3, 2011, which was within 30 days from the date he received the final assessments.

This appeal involves an LLC's member's personal liability for the entity's sales tax. That issue was addressed by the Administrative Law Division in *Kingsley v. State of Alabama*, S. 09-1194, (Admin. Law Div. 4/15/2010). The Division held in that case that LLC members are not personally liable for the non-income taxes owed by the LLC. The Department has appealed the Final Order in *Kingsley* to the Jefferson County Circuit Court,

¹ The Taxpayer's son actively operates the LLC's business in Elmore County, Alabama. The Taxpayer is 81 years old and resides in Baldwin County, Alabama. He claims that he is

where it is currently pending. *State of Alabama v. John R. Kingsley*, Jefferson County Circuit Court, CV-2010-901445.

The Department should notify the Administrative Law Division by July 29, 2011 if it properly notified the Taxpayer, individually, concerning the entry of the final assessments in issue.² If the Department failed to properly deliver a copy of the final assessments to the Taxpayer, the case will be reinstated on the Administrative Law Division docket. In that case, and for the sake of judicial economy, this appeal will be held in abeyance pending a final decision in *Kingsley*. An appropriate Order will be entered after the Department responds concerning the notice issue.

Entered June 28, 2011.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: J. Wade Hope, Esq. (w/enc.)
Thurlo A. Box
Dan Bass
Mike Emfinger
Neal Hearn

in no way involved in the business, other than being an LLC member.

² Code of Ala. 1975, §40-2A-7(b)(4)c. requires the Department to mail a final assessment over \$500 to the taxpayer's last known address by certified mail. The final assessment in issue is over \$500.