

GREGORY F. & BRANDI M. YAGHMAI §  
391 LAREDO DRIVE  
HOOVER, AL 35226, §

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

Taxpayers, §

DOCKET NO. INC. 13-423

v. §

STATE OF ALABAMA §  
DEPARTMENT OF REVENUE.

### **FINAL ORDER DISMISSING APPEAL**

This appeal involves a final assessment of 2008 income tax. The Revenue Department has moved to have the appeal dismissed because the Taxpayers failed to timely appeal the final assessment 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 2008 final assessment in issue on September 18, 2012. The Taxpayers' appeal letter was postmarked May 7, 2013, and was received by the Administrative Law Division on May 8, 2013. 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 Department correctly mailed the final assessment to the Taxpayers' last known address – 391 Laredo Drive, Hoover, AL 35226. The Taxpayers claim in their notice of appeal that he did not receive the final assessment until after the 30 day appeal period had

run. The Department stated in its Motion that the final assessment was timely mailed to the Taxpayer by certified mail, but was 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 Taxpayers' appeal is dismissed for lack of jurisdiction. The Taxpayers may, however, pay the final assessment in full and then petition for a refund. If the refund is denied, the Taxpayers 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 May 15, 2013.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: David E. Avery, III, Esq.  
Stephen Schniper (w/enc.)  
Stoney Trammel