

ALABAMA TAX TRIBUNAL

TOKRICA S. MACK,	§	
Taxpayer,	§	DOCKET NO. INC. 25-0309-RC
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

FINAL ORDER DISMISSING APPEAL

This appeal involves the entry by the Alabama Department of Revenue of final assessments of income tax for 2021 and 2022 against Tokrica S. Mack (the “Taxpayer”). The Revenue Department has moved to dismiss this present appeal for lack of subject matter jurisdiction. Regretfully, the Tribunal must agree with the Department.

Judges are occasionally called upon to render decisions they personally find unfortunate, and this is just such a case. The Department entered its final assessments for 2021 and 2022 on April 14, 2025, and delivered them to the United States Postal Service (“USPS”) the next day, April 15, 2025. Under § 40-2A-7(b)(5)a¹ (as in effect at the time the final assessments were entered),² the Taxpayer had 30 days from the date of mailing (i.e., April 15, 2025) in which to file her appeal to this Tribunal, under § 40-2A-7(b)(5)a (“A taxpayer may appeal to the Alabama Tax Tribunal from any final assessment entered by the department by filing a notice of appeal with the Alabama

¹ Unless specified otherwise, all references to sections and section numbers in this Final Order Dismissing Appeal are to the CODE OF ALABAMA (1975), as amended to date.

² Section 40-2A-7(b)(5)a has since been amended to allow taxpayers 60 days in which to file their appeals instead of 30 days. However, the period applying to the final assessments in question here is the older, 30-day period.

Tax Tribunal within 30 days from the date of mailing or personal service, whichever occurred earlier, of the final assessment....”). In the present case, that means that the Taxpayer must have effectively filed her appeal with this Tribunal by the close of business on Thursday, May 15, 2025.

The Taxpayer sent her appeal to the Tribunal by United Parcel Service (“UPS”) rather than by the USPS. The package was assigned a tracking number by UPS, and the electronic records maintained by UPS for that tracking number show that UPS took possession of the package in Attalla, Alabama at 4:45 PM on May 15, 2025, and delivered it to the Tribunal’s office in Montgomery, Alabama, the next day, May 16, 2025, at 11:46 AM. This accords with the filing stamp affixed to the Notice of Appeal by the Tribunal’s office. These facts are undisputed. There is no doubt, nor does the Department suggest that there is any doubt, that the Taxpayer sent her Notice of Appeal to the Tribunal before the close of business on Thursday, May 15, 2025. Regardless of the markings or other indicia or lack thereof affixed to the package by UPS, because it was delivered to the Tribunal the very next day, it is not just likely but an absolute certainty that the Taxpayer sent her package on or before May 15, 2025. Had the Tribunal received her package on the day she sent it, it would have been timely no matter the manner of delivery, whether by USPS, UPS, FedEx, hand delivery, or carrier pigeon. Nevertheless, the Department suggests, and the Tribunal must agree, that these set of facts deprive the Tribunal of jurisdiction to hear the Taxpayer’s appeal in its current procedural posture.

The so-called “mailbox rule” of § 40-1-45(a)(1) provides:

If any return, claim, statement, or other document required to be filed, or any payment required to be made, within a prescribed period or on or before a prescribed date under the authority of any provision of this title [i.e., Title 40] is, after such period or such date, delivered by United States mail to the agency, officer, or office with which such return, claim, statement, or other document is required to be filed, or to which such payment is to be made, the date of the United States postmark stamped on the cover in which such return, claim, statement, or other document, or payment, is mailed shall be deemed to be the date of delivery or the date of payment, as the case may be.

The statutes governing appeals to the Alabama Tax Tribunal appear in Chapters 2A and 2B of Title 40. Thus, a taxpayer’s notice of appeal to this Tribunal is a kind of “other document required to be filed,” the Tribunal is the “agency” referred to, and the above-quoted statute is effective. In short, had the Taxpayer sent her Notice of Appeal to the Tribunal using the USPS instead of UPS, it would have been deemed timely, because the date of the “United States postmark” would have been (presumably) May 15, 2025.

The choice of UPS instead of USPS is not by itself fatal to the Taxpayer’s appeal. The “mailbox rule” statute also provides “[t]his section shall apply in the case of postmarks not made by the United States Postal Service only if and to the extent provided by the Department of Revenue.” § 40-1-45(b). The Department has adopted an administrative rule relating to the use of delivery services other than the USPS, at *Ala. Admin. Code*, r. 810-1-5.01(8)(a). That rule states “[a]ny reference in this rule to the United States Postal Service shall be deemed to include a reference to any designated delivery service, as defined by 26 U.S.C. § 7502(f), any U.S. Treasury Regulations

promulgated thereunder, or any such designated delivery service listed in Internal Revenue Service Notice 97-26, 1997-1 C.B. 413, or any successor Notice or similar pronouncement by the Internal Revenue Service.” In turn, I.R.C. § 7502(f)(1) states “[a]ny reference in this section to the United States mail shall be treated as including a reference to any designated delivery service, and any reference in this in this section to a postmark by the United States Postal Service shall be treated as including a reference to any date recorded or marked as described in paragraph (2)(C) by any designated delivery service.” A “designated delivery service,” in turn, is defined by I.R.C. § 7502(f)(2) as “any delivery service provided by a trade or business if such service is designated by the Secretary for purposes of this section.” The regulations under I.R.C. § 7502 defer the identification of particular “private delivery services” to “guidance published in the Internal Revenue Bulletin.” Treas. Reg. § 301.7502-1(c)(3). The most recent guidance issued appears to be I.R.S. Notice 2016-30, 2016-18 I.R.B. 676 (May 2, 2016). The notice refers to 7 separate services provided by UPS: UPS Next Day Air Early AM, UPS Next Day Air, UPS Next Day Air Saver, UPS 2nd Day Air, UPS 2nd Day Air A.M., UPS Worldwide Express Plus, and UPS Worldwide Express. The flush language below the listing provides “[o]nly the specific delivery services enumerated in this list are designated delivery services for purposes of section 7502(f). DHL Express, FedEx, and UPS are not designated with respect to any type of delivery service not enumerated in this list. Taxpayers are cautioned that merely because a delivery service is provided by DHL Express, FedEx, or UPS, it does not mean that the

service is designated for purposes of the timely mailing treated as timely filing/paying rule of section 7502.”

Thus, it appears that whether the Taxpayer’s Notice of Appeal in this present case was timely filed depends entirely on which of the several services UPS offers that the Taxpayer selected. As the Department points out, the shipping label on the package the Taxpayer used clearly states “UPS GROUND,” and UPS Ground is not one of the seven UPS services identified in the IRS notice which is adopted into Alabama law by the circuitous route described above.

Thus, even though everyone on all sides agrees that the Taxpayer did and must have sent her Notice of Appeal to this Tribunal on May 15, 2025, which was within the time allowed by law for her to do so, the facts that (A) she sent it by UPS Ground, and (B) that her Notice of Appeal arrived at the Tribunal’s office on May 16, 2025, mean that it was one day too late, and her appeal is due to be dismissed for lack of subject matter jurisdiction. *See* § 40-2A-7(b)(5)c.1 (“The filing of the notice of appeal with the Alabama Tax Tribunal ... [is] jurisdictional. [I]f such prerequisites are not satisfied within the time provided for appeal, the appeal shall be dismissed for lack of jurisdiction.”).

It is inconceivable to me that this Taxpayer, or any taxpayer, sending a package by UPS (or FedEx or DHL, for that matter), would be aware that there is some consequential distinction between the several services offered as regards meeting or failing to meet the time requirements of the mailbox rule, other than cost. As it is, the

Taxpayer having chosen UPS Ground instead of (say) UPS 2nd Day Air has cost the Taxpayer her ability to appeal the Department's Final Assessment, even though UPS Ground managed to deliver her package within one day rather than the promised two days offered by UPS 2nd Day Air, which would have been effective even though it might have been slower.

This result is absurd. If there was a way to rule otherwise in accordance with the law as written, I would gladly take it. As it stands, this absurd result is the one that the language of the statutes and regulations requires. The Tribunal has no choice but to apply the law exactly as written.

The Tribunal does choose to exercise the option provided by § 40-2B-2(l)(1) to “refer[] any issue or issues in dispute to the Department of Revenue’s Taxpayer Advocate for consideration....” The Taxpayer Advocate “shall receive and review inquiries or complaints concerning ... other matters complained of by a taxpayer or other affected party.” § 40-2A-4(b)(1). The Taxpayer Advocate may enter a taxpayer assistance order, which “may declare that any tax, including a final assessment, was erroneously assessed or reported and is not a liability due the state...” and “shall grant relief as deemed appropriate, including the voiding of any erroneously issued final assessment for a tax which was not a debt due the state, [or] granting of any refund due the taxpayer....” § 40-2A-4(b)(1) & (b)(2).

The Tribunal hereby refers this matter to the Taxpayer Advocate, and encourages the Taxpayer Advocate to consider whether the equitable remedies of which

it alone is capable weigh in favor of this Taxpayer and her unknowingly consequential selection of UPS Ground instead of UPS Next Day Air or some other service. The Taxpayer may or may not have a valid case as concerns the ultimate question of her correct income tax liability. The Tribunal is in no way prejudging that issue, but the Tribunal believes that the case should at least be heard on its merits rather than being irretrievably lost due to the most technical of technicalities.

This is especially so in light of the fact that the one (and only) warning this Taxpayer or any taxpayer would have had that her intended method of delivery would be ineffective appears in an otherwise-obscure federal publication adopted into Alabama law by five successive cross-references (Ala. Code (1975) § 40-1-45(a)(1) to *Ala. Admin. Code*, r. 810-1-5.01(8)(a) to I.R.C. § 7502(f)(2) to Treas. Reg. § 301.7502-1(c)(3) to I.R.S. Notice 2016-30). I have practiced in the area of state and local tax law for 25 years and served as a litigator for the Department for a dozen of those, and this is the first time I had heard of this incredibly fine distinction. That does not mean, of course, that the rule is ineffective or somehow invalid; but I hope that it is a factor that the Taxpayer Advocate might take into consideration.

Lastly, the Taxpayer may, if she so chooses, pay the Final Assessments and then request that the taxes thus paid be refunded. If and when the Department denies those refund requests, the Department's denial would then be appealable to this Tribunal under § 40-2A-7(c)(5)a or to circuit court under § 40-2A-7(c)(5)b.

This appeal is dismissed for lack of subject matter jurisdiction, as described above. This Final Order Dismissing Appeal may be appealed to circuit court within 30 days, pursuant to § 40-2B-2(m).

Entered March 26, 2026.

/s/ Ralph M. Clements, III
RALPH M. CLEMENTS, III
Associate Judge
Alabama Tax Tribunal

cc: Tokrica S. Mack
Brian T. Bird, Esq.
Office of Taxpayer Advocacy