

PRO-TEL COMMUNICATION
SERVICES, LLC
21653 STIRLING PASS
LEESBURG, FL 34748,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. BPT. 12-842

FINAL ORDER DISMISSING APPEAL

This appeal involves a final assessment of 2009 business privilege tax. The Revenue Department has moved to have the appeal dismissed because the Taxpayer 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 2009 final assessment in issue on April 16, 2012. The Taxpayer's appeal letter was postmarked July 20, 2012, and was received by the Administrative Law Division on July 25, 2012. 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 Taxpayer claims that the final assessment was mailed to an old address. The Department indicates, however, that it correctly mailed the final assessment in issue to the

Taxpayer's last known address on its records, P.O. Box 4946, Gulf Shores, AL 36547-4946. The Taxpayer claims it "moved and we have registered our LLC in the State of Florida effective 2012." However, because the Taxpayer failed to notify the Department when it moved to the new address, the old address was the last known and only address the Department had for the Taxpayer.

The Taxpayer's appeal is 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.

Although the Administrative Law Division does not have jurisdiction to hear the Taxpayer's appeal, the Taxpayer's appeal letter, and the copy of its 2010 return and check for \$100 in payment of the tax due for that year, has been forwarded to the Department's Taxpayer Advocate for review. The Advocate's office may reduce, void, or take other action as it deems appropriate.

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 August 29, 2012.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Keith Maddox, Esq.
Ann Howcroft (w/enc.)
Cathy McCary
Brenda Russ (w/enc.)

