

810-14-1-.24 Appeals to the Administrative Law Division - Authority of Administrative Law Judge. **(REPEALED)**

(1) Notice of Appeal - Form. A notice of appeal to the Administrative Law Division must specify the taxpayer's name and address, the act or refusal to act that is the subject of appeal, the grounds for the appeal, and the relief sought. If the notice of appeal does not contain sufficient information, the taxpayer may be required to provide such additional information as directed by the Administrative Law Judge. In such cases, the Department's time for filing an answer shall be suspended and the Department shall be allowed such time to file an answer as directed by the Administrative Law Judge.

(2) Department's Answer to Notice of Appeal.

(a) The Administrative Law Division shall notify the Legal Division that a notice of appeal has been filed, and the Legal Division must file an answer to the notice of appeal with the Administrative Law Division within thirty (30) days from receipt of such notice or as otherwise allowed by the Administrative Law Judge. The Administrative Law Judge may, for good cause, allow the Department up to sixty (60) days additional time to file an answer. Any request for additional time must be made in writing to the Administrative Law Division within the time allowed for filing an answer, with a copy to the taxpayer or the taxpayer's representative. The request must set out the specific reasons why additional time is necessary. Additional time to file an answer may also be granted, without a written request, at the discretion of the Administrative Law Judge.

(b) A request for additional time by the Legal Division shall suspend the time for filing an answer, and the Department shall thereafter have such time to answer (not to exceed 60 days) as allowed by the Administrative Law Judge.

(3) Failure to Comply with Statute or Order - Authority of Administrative Law Judge

The Administrative Law Judge has general authority over all matters before the Administrative Law Division. If a taxpayer or the Department fails to comply with any statute or regulation concerning appeals to the Administrative Law Division or with any "preliminary order" issued by the Administrative Law Judge, the Administrative Law Judge shall have discretion to dismiss the appeal, grant all or part of the relief sought by the taxpayer, or take any other action appropriate under the circumstances. Such action shall be designated an "order dismissing appeal" or "order granting relief to taxpayer," as appropriate under the circumstances, from which either party may appeal as allowed by Sections 40-2A-9(b) and 40-2A-9(g), Code of Alabama 1975. The order of the Administrative Law Judge shall be upheld by the circuit court unless the court finds an abuse of discretion by the Administrative Law Judge or that the order is otherwise unreasonable.

(4) Appeal of Case Voluntarily Dismissed by Taxpayer. A taxpayer may request the Administrative Law Judge to dismiss an appeal before the Administrative Law Division at any time before entry of an "opinion and preliminary order" or, if no "opinion

and preliminary order" has been entered, prior to entry of a "final order" in the case. If an appeal is voluntarily dismissed, the dismissal shall be designated a "final order dismissing appeal," which may be appealed to the circuit court within thirty (30) days as provided by Section 40-2A-9(g), Code of Alabama 1975. All other applicable requirements for an appeal to the circuit court must be satisfied.

(a) The intent of this paragraph is to allow a taxpayer to dismiss any appeal to the Administrative Law Division without prejudice any time prior to entry of an order on the merits by the Administrative Law Judge. The taxpayer will then be allowed thirty (30) days after entry of the "final order dismissing appeal" to appeal the substance of the matter in dispute, i.e. final assessment, refund, etc., to circuit court.

(5) Opinion and Preliminary Order. The Administrative Law Judge may, in the appropriate circumstances, issue an "opinion and preliminary order" setting forth findings of facts and conclusions of law and directing the Department or the taxpayer to take additional action as necessary under the circumstances (for example, recalculate tax or refund, produce additional records, etc.). In such cases, a subsequent "final order" will be issued from which either party may appeal.

(6) Appeal. A "preliminary order" as provided by Section 40-2A-9(b), Code of Alabama 1975, or an "opinion and preliminary order" as provided in paragraph (5) above are not appealable orders. Only a "final order" designated as such may be appealed, or an "order dismissing appeal" as provided in paragraph (3) above; or a "final order dismissing appeal" as provided in paragraph (4) above, may be appealed to circuit court.

(7) Application for Rehearing.

(a) Either party may file an application for rehearing within fifteen (15) days after entry of a "final order." Either party may also file an application for rehearing within fifteen (15) days after entry of a "preliminary order" or "opinion and preliminary order" if the party asserts in good faith that the facts or conclusions of law set out therein are incorrect, or that the action required by the "preliminary order" or "opinion and preliminary order" is unreasonable.

(b) A timely filed application for rehearing of a "final order" shall suspend the time for taking an appeal to circuit court. In such cases, an appeal to circuit court may be taken within thirty (30) days after entry of a "final order on application for rehearing." If an application for rehearing is filed relating to a "preliminary order" or an "opinion and preliminary order," then the Administrative Law Judge shall issue a "order on application for rehearing." Such order is not appealable to circuit court, and no appeal may be taken until a "final order" is entered in the matter.

Author: George Mingledorff
Authority: Act 92-186

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810-14-1-.24 Appeals to the Alabama Tax Tribunal. **(NEW RULE)**

(1) Any taxpayer may appeal to the Tax Tribunal from any refund denied by or final assessment entered by the Department, or the cancellation, revocation, or denial of any license, permit, title, or registration administered by the Department. A taxpayer may also appeal to the Tax Tribunal (1) to determine the propriety of any retroactive revocation of a Department revenue ruling, (2) to challenge the Department's proposed adjustment to a taxpayer's net operating loss or carryback, and (3) to dispute a preliminary assessment entered by the Department that has not been made final or withdrawn within 5 years from the date of entry.

(2) The Tax Tribunal shall not have jurisdiction to hear appeals of assessments of ad valorem taxes of real or personal property administered by the various counties in Alabama, except concerning the determination and assessment of public utility property under Chapter 21 of Title 40. The Tax Tribunal also shall not have jurisdiction to hear any matter which is the subject of an action pending in state or federal court, or any action concerning the collection of any final tax liability owed the State.

(3) For the determination of appeal periods and methods, a taxpayer should refer to the administrative rules established by the Tax Tribunal.

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Authority: Sections 40-2A-7(a)(5) and 40-2A-4, Code of Alabama 1975
History:

