FIRST DISTRICT COURT OF APPEAL OF FLORIDA

27 Entrepreneurs Brickell LLC v. Florida Department of Revenue

27 Entrepreneurs Brickell · No. 1D2024-1717 · Decided January 7, 2026

SUMMARY

The First District Court of Appeal of Florida reversed the Florida Department of Revenue's dismissal of 27 Entrepreneurs Brickell LLC's petitions challenging a tax assessment as untimely. The court remanded for an evidentiary hearing because disputed facts remained concerning receipt and issuance of the assessment notice, the timeliness of the petitions, and any applicable tolling.

CASE DETAILS

COURT	First District Court of Appeal of Florida
WRITING FOR THE COURT	Per Curiam; Winokur, J.; M.K. Thomas, J.; Treadwell, J.
JURISDICTION	Florida First District Court of Appeal
DECIDED	January 7, 2026
DOCKET	1D2024-1717
DISPOSITION	reversed_and_remanded
PROCEDURAL POSTURE	Appeal from final agency action by the Florida Department of Revenue dismissing with prejudice petitions for an administrative hearing challenging a tax assessment.
STANDARD OF REVIEW	The court reviewed the validity of the final agency action under section 120.68(7)(a), Florida Statutes, and determined that remand was required because disputed facts had not been resolved through an evidentiary hearing.
PRECEDENTIAL VALUE	published
PARTIES	27 Entrepreneurs Brickell LLC v. Florida Department of Revenue

TOPICS

tax · agency adjudication · judicial review of agency action · appellate procedure · tax deficiency

PRACTICE AREAS

Florida administrative law · state taxation · appellate procedure

QUESTIONS PRESENTED

1. Whether the Department could dismiss Brickell's petitions as untimely without an evidentiary hearing when disputed facts existed concerning receipt and transmission of the notice of proposed tax assessment.
2. Whether Brickell was afforded a valid point of entry into the administrative process before the Department dismissed its petitions.

HOLDINGS

1. The Department could not dismiss the petitions without an evidentiary hearing because the validity of the dismissal depended on disputed facts concerning the date the notice was issued, when Brickell received it, and whether any tolling occurred.
2. An agency must grant affected parties a clear point of entry, within a specified time after a recognizable event, into formal or informal proceedings under section 120.57; waiver of that right must be clearly demonstrated by the agency.

KEY QUOTATIONS

> *"An agency must grant affected parties a clear point of entry, within a specified time after some recognizable event in investigatory or other free-form proceedings, to formal or informal proceedings under Section 120.57."*

> *"Waiver is not a concept favored in the law, and must be clearly demonstrated by the agency claiming the benefit."*

> *"Further proceedings are necessary under sections 120.569 and 120.57 to determine the disputed facts on the timeliness of the petition, the date the notice of proposed assessment was issued, and whether any tolling occurred."*

FACTUAL BACKGROUND

The Department issued a notice of proposed tax assessment dated November 26, 2019, providing a sixty-day period to contest the assessment after it became final. Brickell alleged that it did not receive the notice until March 2020, when it received only one page from a collector, and that it received a complete copy in April 2022. Because no hearing occurred, the record contained no testimony or other evidence establishing when the notice was transmitted or mailed.

PROCEDURAL HISTORY

The Department dismissed Brickell's petitions as untimely without conducting an evidentiary hearing. Brickell appealed, arguing that disputed facts concerning receipt and transmission of the notice of proposed assessment required a hearing to determine whether it had been afforded a valid point of entry into the administrative process. The First District Court of Appeal reversed and remanded for an evidentiary hearing.

DISPOSITION

reversed_and_remanded

REMAND INSTRUCTIONS

The Department must conduct an evidentiary hearing under sections 120.569 and 120.57 to determine the disputed facts concerning the timeliness of the petitions, the date the notice of proposed assessment was issued, and whether any tolling occurred.

CASES CITED

- ADN Global, LLC v. Fla. Dep't of Revenue, 418 So. 3d 210, 210 (Fla. 1st DCA 2025)
- Henry v. State Dep't of Admin., Div. of Retirement, 431 So. 2d 677, 680 (Fla. 1st DCA 1983)
- Mr. Comfort Furniture Corp. v. Dep't of Revenue, 335 So. 3d 193, 194 (Fla. 1st DCA 2022)
- Campbell v. Dep't of Health, 233 So. 3d 488, 489–90 (Fla. 1st DCA 2017)

OPINION

27 Entrepreneurs Brickell LLC v. Florida Department of Revenue
PER CURIAM.
FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA
_____________________________ No. 1D2024-1717 _____________________________
27 ENTREPRENEURS BRICKELL
LLC,
Appellant, v.
FLORIDA DEPARTMENT OF
REVENUE,
Appellee. _____________________________ On appeal from the Florida Department of Revenue. Mark S. Hamilton, General Counsel. January 7, 2026 PER CURIAM. 27 Entrepreneurs Brickell LLC ("Brickell") appeals final agency action by the Department of Revenue ("Department") dismissing, with prejudice, its petitions for an administrative hearing challenging a tax assessment. Without an evidentiary hearing, the Department dismissed the petitions as untimely because "[t]he deadline to file a petition for administrative hearing is jurisdictional and missing the deadline bars the hearing of the matter." We reverse. The notice of proposed tax assessment issued by the Department was dated November 26, 2019. It provided a sixty-day window from the date the assessment became final to contest the assessment. See § 72.011(2)(a), Fla. Stat. (2019). But in its petitions for administrative hearing, Brickell denied receiving it until March 2020 when it received only one page of the November 2019 notice from a collector. In April 2022, Brickell received a complete copy of the notice. As no hearing occurred, there is no testimony or other evidence in the record to establish the date the notice was transmitted or mailed. Brickell sought an evidentiary hearing to establish whether it was afforded a valid point of

entry to the administrative process. Almost two years after Brickell's petitions were initially filed, the Department entered separate final orders dismissing each petition with prejudice. "An agency must grant affected parties a clear point of entry, within a specified time after some recognizable event in investigatory or other free-form proceedings, to formal or informal proceedings under Section 120.57." ADN Global, LLC v. Fla. Dep't of Revenue, 418 So. 3d 210, 210 (Fla. 1st DCA 2025) (quoting Henry v. State Dep't of Admin., Div. of Retirement, 431 So. 2d 677, 680 (Fla. 1st DCA 1983)). Additionally, "[w]aiver is not a concept favored in the law, and must be clearly demonstrated by the agency claiming the benefit." Id. (quoting Henry, 431 So. 2d at 680). Because there was no hearing before the agency action and because the validity of the agency's order dismissing the petition depends on disputed facts establishing the timeliness of the petitions, we remand the case for an evidentiary hearing. See § 120.68(7)(a), Fla. Stat. (2019). "Further proceedings are necessary under sections 120.569 and 120.57 to determine the disputed facts on the timeliness of the petition, the date the notice of proposed assessment was issued, and whether any tolling occurred." Mr. Comfort Furniture Corp. v. Dep't of Revenue, 335 So. 3d 193, 194 (Fla. 1st DCA 2022) (citing Campbell v. Dep't of Health,
233 So. 3d 488, 489–90 (Fla. 1st DCA 2017)).

Accordingly, the action is REVERSED and REMANDED for an evidentiary hearing. WINOKUR, M.K. THOMAS, and TREADWELL, JJ., concur. 2 _____________________________ Not final until disposition of any timely and authorized motion under Fla. R. App. P. 9.330 or 9.331. _____________________________ Jonathan W. Taylor, Moffa, Sutton, & Donnini P.A., Fort Lauderdale, for Appellant. James Uthmeier, Attorney General, and William Folsom, Senior Assistant Attorney General, Tallahassee, for Appellee. 3