

STATE OF ALABAMA,
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

vs.

§

Docket No. U. 91-184

RUSSELL CORPORATION
Lee Street
Alexander City, AL 35010,

§

§

Taxpayer.

FINAL ORDER

The Revenue Department assessed Tallapoosa County use tax against Russell Corporation (Taxpayer) for the period September 1989 through September 1990. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on July 15, 1992. Phillip J. Carroll, III and William L Hinds, Jr. appeared for the Taxpayer. Assistant counsel Wade Hope represented the Department.

FINDINGS OF FACT

The question in this case is whether the Department is authorized to assess and collect a 1% Tallapoosa County use tax against the Taxpayer for the period in issue, as argued by the Department, or only a 1/10 of 1% use tax, as argued by the Taxpayer.

The Revenue Department is empowered to administer all Tallapoosa County sales and use taxes enacted by the County Commission. The County Commission convened on June 30, 1989 and by a four to one vote adopted a resolution imposing a 1 % sales tax and a 1/10 of 1 % use tax in the County. The effective date of the resolution was September 1, 1989.

The Tallapoosa County Clerk served a certified copy of the June 30, 1989 resolution on the Department as required by Code of Ala. 1975, §11-51-180. The certification was dated July 6, 1989. However, instead of indicating a 1/10 of 1% use tax as passed by the Commission, the

resolution mistakenly indicated a 1% use tax. The Department upon receipt of the resolution notified all County taxpayers that a 1 % sales tax and a 1 % use tax had been passed, effective September 1,1989.

The Department audited the Taxpayer and notified the Taxpayer that a 1 % County use tax was due for the period September 1989 through September 1990. The Taxpayer was aware that a 1/10 of 1 % use tax had been passed instead of a 1 % tax and contacted the County Commission concerning the problem.

The County Commission attempted to correct the mistake by sending the Department a letter from the County Clerk and signed by all five County Commissioners certifying that the original resolution showing a 1% use tax rate was incorrect and that the correct rate was 1/10 of 1%. A certified resolution showing a 1/10 of 1% use tax was attached. The letter was dated January 7,1991 and the County Clerk testified that she mailed the letter and attached resolution to the Department on that date.

The Department denies having received the letter or the attached resolution directly from the Commission, but acknowledges that a copy of the letter and resolution was received as an attachment to a letter from the Taxpayer to the Department's Audit Verification Section dated January 22,1991.

The Department subsequently entered the preliminary assessment in issue based on a 1% rate as indicated in the original resolution. The Department's position is that the rate cannot be reduced from 1 % down to 1 /10 of 1 % because a formal amendment to that effect has never been received from the Commission as required by Code of Ala. 1975, §11-51-185.

The Taxpayer timely appealed the preliminary assessment to the Administrative Law Division and a hearing was conducted on July 15, 1992. The County Commission convened

on July 31, 1992 and passed a resolution again verifying that the use tax as originally passed on June 30, 1989 was 1/10 of 1 %. A copy of the corrected June 30, 1989 resolution showing a 1/10 of 1% use tax was attached to the July 31, 1992 resolution and delivered to the Department.

CONCLUSIONS OF LAW

I understand and appreciate the Department's reluctance to change the use tax rate from the original 1% certified by the County Commission. However, the Department is authorized to collect only those taxes "duly promulgated and adopted by the (county) governing body". See, Code of Ala. 1975, §11-51-180. If Tallapoosa County had initially passed a 1% use tax, then a formal amendment changing the rate to 1/10 of 1% would have to be served on the Department as required by §11-51-185. But the evidence is undisputed that the rate as originally passed by the Commission was 1/10 of 1%. Consequently, a formal amendment is not necessary. Rather, the Clerk's mistake in certifying a 1% rate to the Department was adequately corrected either when the Department received a certified copy of the corrected June 30, 1989 resolution attached to the Clerk's letter dated January 7, 1991, or upon receipt of the corrected June 30, 1989 resolution attached to the Commission's July 31, 1992 resolution. In either case, the Department is authorized to assess and collect only a 1/10 of 1% use tax from the Taxpayer and all other Tallapoosa County taxpayers.

The preliminary assessment in issue should be adjusted to reflect a 1/10 of 1 % use tax and thereafter made final, plus applicable interest. The Department should also notify all other Tallapoosa County taxpayers subject to use tax that the correct use tax rate effective September 1, 1989 was 1/10 of 1%, not 1%.

Entered on September 17, 1992.

BILL THOMPSON
Chief Administrative Law Judge

BT:jt9