

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

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DOCKET NO. S. 92-201

FINNEGAN'S OF TROY, INC.
916 Murphree Street
Troy, Alabama 36081,

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§

Taxpayer.

§

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed State, Pike County and City of Troy sales tax against Finnegan's of Troy, Inc. (Taxpayer) for the period July, 1988 through June, 1991. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on December 17, 1992. Lewis B. Hickman, Jr. appeared for the Taxpayer. Assistant counsel Claude Patton represented the Department.

FINDINGS OF FACT

The Taxpayer operated a bar in Troy, Alabama during the period in issue. The Department audited the Taxpayer and assessed additional sales tax based on gross receipts derived from (1) retail sales, (2) pool tables, and (3) admissions to entertainment events.

(1) Gross Receipts from Retail Sales

The Taxpayer failed to keep a sales journal, cash register tapes or other sales records during the audit period. Consequently, the Department computed the Taxpayer's taxable sales based on total purchases plus a 65% markup. The Taxpayer had reported and paid sales tax on the same basis and consequently does

not dispute this part of the audit.¹

(2) Gross Receipts from Pool Tables

The Taxpayer operated eight pool tables during the audit period but failed to keep records from which gross receipts could be computed.² Consequently, the examiner estimated pool table

¹ The Department's acceptance of the Taxpayer's indirect method for computing tax in this case does not relieve the Taxpayer of the duty to keep adequate records, see §40-2A-7. The Taxpayer should keep good records of all taxable receipts in the future.

² The Taxpayer's owner testified that she counted the money each time the tables were emptied, wrote the amount down on a piece of paper, and then took the information to her accountant. The accountant then used the information to prepare and file the Taxpayer's monthly sales tax returns. Although the sales tax returns were not submitted into evidence, the Taxpayer's attorney estimated that the Taxpayer reported pool table gross receipts of approximately \$180.00 - \$220.00 per month. The auditor did not ask if the accountant had any records relating to pool table receipts, and the Taxpayer did not offer any such records to the examiner or as evidence at the administrative hearing.

gross receipts based on information obtained from an unrelated individual that operated pool tables in the area.

The individual knew that the examiner was a Department employee but did not know the exact purpose for the inquiry. The individual stated that receipts would vary widely depending on the location, but that a good average would be \$60.00 per day per table. The individual also named the Taxpayer's business among others as a good location. The examiner, giving the Taxpayer the benefit of a doubt, reduced the daily average to \$25.00 and used six tables instead of eight.

(3) Gross Receipts from Admissions

The examiner estimated that a band played at the bar approximately twice a month when Troy State University was in session, or a total of 18 times during the audit period. The estimate was based on the examiner's conversations with the owner.

The examiner also estimated gross admissions at \$800.00 per band appearance based on a \$800.00 check paid by the Taxpayer to a band during the audit period.

The owner disputes the examiner's estimates and testified that admission was charged only the one time when she hired the band for \$800.00. She also testified that the examiner may have been confused or misled by her statements that a young guitar player had played at the bar at least twice weekly while school was in session. No evidence was introduced showing that the Taxpayer had

charged admission other than the one time represented by the \$800.00 check.

CONCLUSIONS OF LAW

All taxpayers subject to sales tax are required to keep adequate records from which their liability can be accurately computed. See, Code of Ala. 1975, §40-2A-7(a), and its predecessor, Code of Ala. 1975, §40-23-9. If a taxpayer fails to keep adequate records, the Department is authorized to use any reasonable method or information to compute the taxpayer's liability. Bradford v. C.I.R., 796 F.2d 303; Webb v. C.I.R., 394 F.2d 366.

The Taxpayer failed to provide the Department examiner with any records concerning pool table gross receipts. Consequently, the examiner properly estimated pool table receipts based on the best information available. While the auditor's method for obtaining the information was unorthodox, the results are reasonable under the circumstances and are upheld. \$25.00 a day per table is not unreasonable and the Taxpayer cannot object that six tables were used to compute liability instead of eight. The Department is not obligated to rely on a taxpayer's verbal assertions, and a taxpayer that fails to keep adequate records cannot object that the Department's estimates based on the best information available are not exact. Bradford v. C.I.R., supra.

However, the examiner's estimates concerning admissions were adequately rebutted by the owner's testimony that a cover charge was collected only once during the audit period. While the owner's testimony is not conclusive, the Department presented no evidence disputing the testimony or otherwise showing that the Taxpayer received gross receipts from admissions. Accordingly, the audit should be adjusted to reflect only \$800.00 in admissions during the audit period.

The Department is directed to adjust the audit as set out above and inform the Administrative Law Division of the adjusted amount due. A Final Order will then be entered setting out the Taxpayer's adjusted liability.

Entered on January 13, 1993.

BILL THOMPSON
Chief Administrative Law Judge