

STATE OF ALABAMA,
DEPARTMENT OF REVENUE,

vs.

THE VILLAGE CLUB
119 West Jeff Davis Street
Montgomery, AL 36108,

Taxpayer.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 92-232

FINAL ORDER

The Revenue Department assessed State and Montgomery County sales tax against The Village Club (Taxpayer) for the period January 1, 1989 through December 31, 1991. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on October 7, 1992. Robert Franklin, Bobby Jackson, Marvin Davis and Larry Hamilton appeared for the Taxpayer. Assistant counsel Beth Acker represented the Department.

The issue in this case is whether the Taxpayer owes sales tax on gross receipts derived from bingo games conducted during the years 1989 through 1991.

The Taxpayer operated a weekly bingo game in downtown Montgomery during the years in issue, 1989 through 1991. The Taxpayer is a volunteer organization and used the bingo proceeds for charitable purposes in the community.

The Taxpayer was unaware that bingo receipts were subject to sales tax and therefore did not report and pay sales tax on its gross receipts prior to May, 1989. The Department informed the Taxpayer in May, 1989 that sales tax was due on its bingo receipts.

The Taxpayer subsequently filed returns and paid the tax from July, 1989 through May, 1990.

The Taxpayer stopped paying sales tax in June, 1990 based on a May 29, 1990 letter from the Revenue Department. The letter notified all bingo operators that bingo receipts were exempt from sales tax effective June 1, 1990. However, the letter clearly explained that only charitable organizations qualified under §501(c) of the Internal Revenue Code would be exempt from the tax.

The Taxpayer is not a qualified 501(c) organization. Nevertheless, the Taxpayer misconstrued the letter to mean that it no longer owed sales tax, and consequently, quit paying the tax.

The Taxpayer maintained records and every year took the records to the Montgomery County Sheriff's office to obtain its annual bingo operator's license. However, because the Taxpayer was not aware that it had to keep records for sales tax purposes, the Taxpayer left the records at the Sheriff's office and all but the records for 1991 were thrown away.

The Department audited the Taxpayer and computed liability for the three years in issue as follows: The Taxpayer's partial records from 1988 were used to estimate liability for 1989. The Department added prize money paid out plus expenses (rent, etc.) to arrive at taxable gross receipts. Liability for 1990 and 1991 was computed using the Taxpayer's records for 1991. The Taxpayer was

allowed a credit for all tax previously paid. No penalty was added to the assessments.

The Taxpayer complains that in some weeks it paid out more money than it took in. However, the Department points out that overall the Taxpayer clearly had more gross receipts than expenses because otherwise no money would have been available for use for charitable purposes.

I sympathize with the Taxpayer in this case. The Taxpayer obviously serves a useful community purpose and the four individuals that attended the administrative hearing are all well-meaning and sincere. However, the law requires that all bingo receipts received by non-501(c) organizations must be taxed. Fraternal Order of Eagles v. White, 447 So.2d 783. The letter from the Department to all bingo operators dated May 29, 1990 plainly states that only qualified 501(c) organizations were exempt from the tax after that date. The Taxpayer cannot be relieved of liability because it did not understand the letter.

The Department audit is based on the best information available. The audit favors the Taxpayer because it did not tax gross receipts above prize money and expenses which were used for charitable purposes. Technically, those proceeds are also taxable.

The above considered, the assessments in issue are affirmed in the amount of \$28,245.44 for State sales tax and \$10,591.99 for Montgomery County sales tax, with additional interest from May 14,

1992. This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered on November 13, 1992.

BILL THOMPSON
Chief Administrative Law Judge