

BEST DEAL MOBILE HOME SALES	§	STATE OF ALABAMA
110 Pope Drive		DEPARTMENT OF REVENUE
Troy, AL 36079-5148,	§	ADMINISTRATIVE LAW DIVISION
and its partners Gil Chancellor,		
Chad H. Chancellor, and all other	§	
partners,		
	§	
Taxpayer,		DOCKET NO. S. 01-551
	§	
v.		
	§	
STATE OF ALABAMA		
DEPARTMENT OF REVENUE.	§	

FINAL ORDER

The Revenue Department assessed Best Deal Mobile Home Sales, a partnership and its partners Gil Chancellor and Chad Chancellor, for sales tax for March 1999 and September 1999 – March 2000, and also April 2000 – July 2000. Chad Chancellor (“Taxpayer”) appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on November 16, 2004. Will Sellers represented the Taxpayer. Assistant Counsel Wade Hope represented the Department.

The Taxpayer and his father, Gil Chancellor, applied to the Department for an Alabama sales tax account number in November 1997. The business name on the application was Best Deal Mobile Home Sales. The application was signed by the Taxpayer and his father. The Department issued the business a sales tax license in due course.

The business failed to timely file sales tax returns with the Department for the months in issue, March 1999 and September 1999 through July 2000. The Department attempted to obtain the returns, but was unable to do so. It consequently estimated the business’ liability for the subject months.

The business subsequently filed returns with the Department in June 2000 for the months of September 1999 through March 2000. The returns showed the signature of "Chad Chancellor." The Department accepted the returns as filed and reduced the business' liability accordingly. It subsequently entered the final assessment in issue in July 2001. The Taxpayer appealed.

The Taxpayer served in the U.S. Army in the mid-1990s. He testified at the November 16 hearing that after leaving the Army, he returned to Troy, Alabama to live. He began buying used mobile homes at repossession sales, repairing and cleaning the homes, and then reselling them. The Taxpayer's father was unemployed and living in Troy at the time, and began helping the Taxpayer in the business. As indicated, the Taxpayer and his father applied for and received a sales tax account number in late 1997.

The Taxpayer testified that he and his father operated the business as an equal partnership from 1997 through most of 1998. In May 1998, articles of organization were issued for Best Deal Mobile Home Sales, LLC. The Taxpayer was listed as 100 percent owner. He concedes that he signed the articles, but explained that the LLC was formed at the request of his father and for the purpose of limiting their personal liability. He also testified that nothing changed because the LLC was formed.

Shortly after the LLC was formed, the Taxpayer decided to get out of the mobile home business. To fully divest himself from the business, the Taxpayer and his father executed an agreement on December 31, 1998 whereby the Taxpayer transferred his ownership interest in the LLC to his father. The agreement was witnessed by the Taxpayer's mother who testified concerning the agreement at the November 16 hearing.

The Taxpayer continued to help his father with the business in 1998, but only sporadically as a wage earning employee of the business, not as owner. He also claims that he did not sign the sales tax returns that were filed for the business in June 2000 concerning the months of September 1999 through March 2000.

The Taxpayer subsequently joined the Army in 2000 and has since served as a helicopter pilot in Iraq. He is scheduled to return to Iraq sometime in 2005.

The Department argues that the Taxpayer is liable for the sales tax in issue because he personally applied for and received a sales tax license for the partnership in late 1997. The Department was also never notified that the Taxpayer had ceased being a partner in the partnership, or that the business had organized as an LLC in mid-1998.

The Taxpayer contends that he stopped participating in the business with his father in mid to late 1998, and that he completely divested himself of the business when he transferred the business to his father in December 1998. I agree with the Taxpayer.

The business originally started as a partnership. As a partner and active participant in the partnership, the Taxpayer was personally liable for the sales taxes owed by the business. However, in May 1998, the business was reorganized as a limited liability company. The business thus ceased to operate as a partnership at that time.

An owner or officer is not personally liable for the debts of a limited liability company under Alabama law. Code of Ala. 1975, §10-12-1, et seq. An owner or officer may be held personally liable for the trust fund taxes of an LLC if the owner or officer is responsible for paying the trust fund taxes of the company, and in that capacity willfully fails to do so. Code of Ala. 1975, §§40-29-71 and 40-29-72. The evidence shows, however, that the

Taxpayer had transferred his interest in the LLC to his father before the months in issue, and that the Taxpayer was not responsible for the taxes of the LLC or otherwise involved in the operation of the LLC in those months. Consequently, the Taxpayer cannot be held personally liable for the tax in issue.

The Taxpayer is dismissed from the final assessments in issue.

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

Entered December 6, 2004.

BILL THOMPSON
Chief Administrative Law Judge