STATE OF ALABAMA, DEPARTMENT OF REVENUE,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE
	§	ADMINISTRATIVE LAW DIVISION
vs.		
	§	DOCKET NO. S. 93-279
CHARLES R. WHIDDON d/b/a Dothan Driving Range 6101 Highway 84 West Dothan, AL 36302,	§	
Taxpayer.	§	

FINAL ORDER

The Revenue Department filed tax liens in Houston County against Charles R. Whiddon (Taxpayer) for Houston County and City of Dothan sales tax allegedly owed by the Taxpayer for the period February, 1991 through December, 1992. The Taxpayer appealed the filing of the tax liens to the Administrative Law Division and a hearing was conducted on October 19, 1993. The Taxpayer appeared at the hearing. Assistant counsel Wade Hope represented the Department.

The issue is whether the Department was authorized to file tax liens against the Taxpayer under the circumstances in this case.

The Taxpayer opened a golf driving range in early 1991 and contacted the Revenue Department office in Dothan to find out what taxes he should pay relating to the business. The Taxpayer was informed by an unidentified Department employee that he should report and pay the 4% State rental tax. Based thereon, the

Taxpayer timely reported and paid the State rental tax from the time he opened until early 1993.

The Department audited the business in early 1993 and determined that sales tax was due on the Taxpayer's gross receipts, not the rental tax. The Department allowed the Taxpayer a credit against his State sales tax due for the State rental tax previously paid. However, the Department also set up additional Houston County and City of Dothan sales tax against the Taxpayer. Apparently, Houston County and the City of Dothan do not have a rental tax and consequently no credit could be allowed for local rental tax previously paid.

The Department notified the Taxpayer by letter dated March 8, 1993 of the additional Dothan and Houston County tax due. The letter ended by stating "that assessments may carry additional penalties and will require the filing of tax liens as provided by law."

The Taxpayer questioned whether sales tax or rental tax was due and consequently filed a petition for review on March 12, 1993 asking for a conference with the Sales and Use Tax Division. The Taxpayer attached a letter to the petition for review explaining his complaint. The Department subsequently scheduled an informal conference for July 22, 1993.

However, the Department informed the Taxpayer by letter prior to the conference that a tax lien was being filed for the

additional local sales taxes claimed by the Department. The Department subsequently filed a tax lien with the Judge of Probate on June 23rd, and also entered preliminary assessments on that date for the tax due.

The Taxpayer attended the informal conference on July 22nd, but the Department held to its position that additional county and city tax was due. The Department did agree to waive all penalties under the circumstances. The Taxpayer subsequently paid the taxes in full and the Department immediately notified the Houston County Judge of Probate that the liens should be dismissed. The liens were dismissed on July 30, 1993.

The Taxpayer does not dispute that the local sales taxes were owed, but does complain that the Department should not have filed the tax liens against him because the tax was still being contested. The Taxpayer claims that the tax liens are on his permanent record and have irreparably damaged his credit rating.

I understand and sympathize with the Taxpayer's argument. However, §40-29-20 clearly authorizes the Department to file a lien against a taxpayer for any tax that the Department deems to be delinquent. Section 40-29-20 does not specify exactly when a lien can be filed, but the section does indicate that a lien can be filed anytime after the due date of the taxes in question.

An argument could be made that the Department as a matter of policy should not file tax liens until a final assessment has been

entered, or at least until a taxpayer has had an opportunity to appear and protest the tax at an informal conference with the Department. However, §40-29-20 clearly authorized the Department to file a lien against the Taxpayer when it did.

The Taxpayer complains that having a tax lien on his record hurts his credit rating and implies that he attempted to escape an established tax liability. That is not the case. The Taxpayer certainly had a valid reason for questioning the assessment, and he was not required to pay the tax before contesting the amount claimed. To my knowledge the Taxpayer has never failed to timely pay an uncontested tax liability, and the fact that the Department filed a tax lien to protect its interest should not be viewed negatively by anyone reviewing the Taxpayer's credit history.

Entered on October 27, 1993.

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BILL THOMPSON
Chief Administrative Law Judge