

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

vs.

§

BARRY TIDWELL
d/b/a Tidwell Tire
2253 Pinson Valley Parkway
Tarrant, AL 35217,

§

DOCKET NO. S. 93-303

§

Taxpayer.

§

FINAL ORDER

The Revenue Department assessed State sales tax against Barry Tidwell, d/b/a Tidwell Tire ("Taxpayer"), for the period June, July and September 1992, and also City of Tarrant sales tax for the period April, May, June, July and September 1992. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on December 12, 1994. The Taxpayer's representative, attorney William A. Robinson, was notified of the hearing by certified mail, but failed to appear. Assistant counsel Jeff Patterson represented the Department.

The primary issue in this case is whether the Department properly assessed the tax in issue. A second issue is whether the frivolous appeal penalty levied at Code of Ala. 1975, §40-2A-11(f) should also be assessed.

The Taxpayer filed his State and City of Tarrant sales tax returns for the months in issue in March 1993. The returns were signed by the Taxpayer. Checks were submitted for the amounts due, but were subsequently dishonored by the Taxpayer's bank.

The Department entered the final assessments in issue on

August 10, 1993. The Taxpayer, through his representative, timely appealed to the Administrative Law Division on September 7, 1993.

The Taxpayer filed a petition in U. S. Bankruptcy Court on October 27, 1993. The Taxpayer's appeal before the Administrative Law Division was accordingly suspended pending his dismissal from bankruptcy. The Taxpayer was discharged from bankruptcy on March 27, 1994.

The Administrative Law Division was notified by the Department's Legal Division on October 3, 1994 that the Taxpayer had been discharged from bankruptcy. Accordingly, a hearing was scheduled in the matter for December 12, 1994. The Taxpayer's representative was notified of the hearing by certified mail on October 5, 1994. However, neither the Taxpayer nor his representative appeared at the December 12 hearing.

The assessments in issue were properly computed on the Taxpayer's signed returns. The Department also properly assessed the failure to timely file and timely pay penalties levied at Code of Ala. 1975, §§40-2A-11(a) and (b).

The final assessments are affirmed. In addition, the frivolous appeal penalty levied at Code of Ala. 1975, §40-2A-11(f) is also assessed against the Taxpayer. From the evidence and the actions of the Taxpayer and his representative, I can only conclude that the Taxpayer's appeal was filed primarily for the purpose of delay. Accordingly, the 25% penalty levied by the above section is

appropriate.

The above considered, judgment is entered against the Taxpayer for State sales tax in the amount of \$1,285.20 (assessment of \$1,028.16 plus 25% frivolous appeal penalty of \$257.04), and for City of Tarrant sales tax in the amount of \$2,064.49 (assessment of \$1,651.59 plus 25% frivolous appeal penalty of \$412.90).

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

Entered on December 21, 1994.

BILL THOMPSON
Chief Administrative Law Judge