

THE MOBILE ALABAMA BOWL, INC.	§	STATE OF ALABAMA
c/o E. W. McKean, Jr., CPA		DEPARTMENT OF REVENUE
Saltmarsh, Cleaveland & Gund	§	ADMINISTRATIVE LAW
DIVISION		
3224 Executive Park Circle		
Mobile, AL 36606,	§	
Taxpayer,	§	DOCKET NO. S. 02-132
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

**FINAL ORDER**

The Mobile Alabama Bowl, Inc. (“Taxpayer”) applied to the Department for a sales tax refund for December 1999 and December 2000. The Department denied the refund. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(c)(5)a. A hearing was conducted on June 13, 2002 in Mobile, Alabama. CPA Walter McKean represented the Taxpayer. Assistant Counsel Duncan Crow represented the Department.

**ISSUE**

This case involves the gross receipts “sales tax” on public places of amusement levied at Code of Ala. 1975, §40-23-2(2). The Taxpayer sponsored college football games in the subject months, and was liable for the gross receipts tax on its ticket sales. The issue is whether the Taxpayer should have computed the tax on the full ticket price, as argued by the Department, or on the ticket price less 9 percent sales tax included in the price, as claimed by the Taxpayer.

**FACTS**

The Taxpayer sponsored football games in Mobile, Alabama in December 1999 and December 2000. The Taxpayer charged \$45 per ticket to both games.

The \$45 price was printed on the ticket. The back of each ticket included the statement “9% sales tax is included in the ticket price.”

The Taxpayer paid the gross receipts sales tax in both years on the full \$45 ticket price. It subsequently applied to the Department for a refund, arguing that the 9 percent sales tax included in the ticket price should have been excluded from the taxable measure.<sup>1</sup> The Department denied the refund because the admission charge and the amount of sales tax included in the ticket price were not separately stated on the face of the ticket, as required by Dept. Reg. 810-6-1-.125(2). The Taxpayer appealed.

### **ANALYSIS**

Code of Ala. 1975, §40-23-26(a) requires that any taxpayer subject to the retail sales taxes or gross receipts tax levied in §40-23-2 “shall add the tax to the sales price and collect the tax from the purchaser on all sales . . . .” The terms “sales price,” “purchaser,” and “sales” used in the statute refer to the sales taxes on retail sales of tangible personal property levied at Code of Ala. 1975, §§40-23-2(1), (3), and (4). However, §40-23-26(a) specifically applies to all taxes levied in §40-23-2, and thus is sufficiently broad to also require taxpayers subject to the §40-23-2(2) gross receipts tax to add the tax to the “sales price,” i.e. the admission fee or other gross receipts subject to the tax.

Code of Ala. 1975, §40-23-26(b) makes it unlawful for a taxpayer to fail to add the tax to the sale price or gross receipts and collect the tax from the customer. That section provides further that “it shall likewise be unlawful . . . to absorb or advertise directly or indirectly the absorption or refund of the amount

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<sup>1</sup>The 9 percent tax included City of Mobile and Mobile County taxes. The Department does not administer those taxes. Consequently, if a refund is due, the Department would only be required to refund the 4 percent State tax administered by the Department.

required to be added to the sales price and collected from the purchaser, or any portion of such amount.”

In most retail sales transactions, sales tax is routinely added to the sales price by the retailer. For example, if a customer buys an item for \$1, the retailer adds the 4 percent State and any applicable local taxes to the \$1 sales price, and charges the customer accordingly.

The issue is more complicated concerning the gross receipts tax levied at §40-23-2(2). For convenience, most businesses that charge an admission fee charge a lump-sum amount for a ticket. Arguably, the lump-sum ticket price is the “sales price” referred to in §40-23-26(a) to which the 4 percent gross receipts tax must be added.<sup>2</sup> As a practical matter, however, sales tax is usually not added to and collected in addition to the stated ticket price. Rather, sales tax is included as part of the lump-sum charge.

To accommodate taxpayers that charge a lump-sum amount, the Revenue Department has provided by regulation that tax included in a lump-sum ticket price may be deducted in arriving at the taxable measure, but only if the admission charge and the amount of tax are separately stated on a permanent sign at the business or on the ticket to the event. Reg. 810-6-1-.125(2) reads as follows:

(2) Sales tax shall be collected as a separate item from the consumer at the amusement rate of tax based on the price of admission to the place of amusement. Where the tax is not stated and collected separately, the total amount of the admission price shall be used as the measure of the tax. A deduction for the sales tax included in the price of admission will be allowed in computing the tax due whenever the business has permanently displayed a sign showing the admission price and the amount or amounts of tax due within the view of persons paying the admission, or where the

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<sup>2</sup>The term “sales price” is not defined in the Alabama sales tax statutes. It is defined in the use tax law at Code of Ala. 1975, §40-23-60(10) as the “total amount for which tangible personal property is sold. . . .”

tickets used in connection with the transactions have plainly printed on the face the admission price and, as a separate item, the amount of sales tax due. The federal amusement tax collected as a separate item shall not be included in the measure of the sales tax. (Section 40-23-26)

As a practical matter, a customer buying a ticket does not care whether the amount of tax is separately stated on the ticket, or only the applicable rate of tax is stated, or even if the ticket only states that tax is included, without the specific amount or rate. The customer pays the same amount in any case. However, the Alabama Legislature specified in §40-23-26(b) that it is unlawful for a retailer or amusement operator to absorb the applicable sales tax in the sales price or admission charge. Charging a lump-sum ticket price and claiming that sales tax is included in the price constitutes such an illegal absorption. Only if the admission amount (ticket price less tax) and the amount of tax are separately stated on the ticket or on a sign, as required by Reg. 810-6-1-.125(2), is there no illegal absorption of the tax in the price.

In *State of Alabama v. Huntsville Baseball Club, Inc. and Birmingham Baseball Club, Inc.*, S. 92-208 (Admin. Law Div. 2/23/94), the issue was whether the Huntsville club could back out the sales tax from the lump-sum ticket price because it had a sign at its stadium indicating “price includes tax.” The Administrative Law Division held that the sign was insufficient because it did not comply with the applicable regulation.<sup>3</sup>

Pursuant to §40-23-26(b), a taxpayer cannot charge a lumpsum admission price and absorb or include the tax in the price. Rather, as required by Department Reg. 810-6-2-.86, the tax must be specifically stated as a separate item in addition to the price charged for admission. If not, the tax is illegally absorbed in the price and tax is due on the entire admission price.

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<sup>3</sup>The applicable regulation at the time was 810-6-2-.86. That regulation was repealed and replaced by Reg. 810-6-1-.125 in 1998. The current regulation is in substance identical to the repealed regulation.

The next question is whether the Huntsville sign stating only that "price includes tax" is sufficient to comply with the above statute and regulation. I do not believe it is. The regulation properly requires that the amount of the tax must be separately stated from the admission price. The sign at the Huntsville stadium does not do that. Consequently, because the tax was illegally absorbed in the price, Huntsville is liable on the entire amount received for admissions during the audit period.

*Huntsville Baseball Club & Birmingham Baseball Club*, S. 92-208 at 9.

The sign at the baseball stadium in the above case only stated "price included tax," whereas the Taxpayer's tickets also stated the rate (9%) of tax included. Unfortunately, the tickets still did not comply with Reg. 810-6-1-.125, which mandates that the amount of the admission (ticket price less tax) and the amount (not rate) of the tax must be separately stated on the ticket.

The Revenue Department is authorized to promulgate regulations dictating how taxpayers should separately record taxable and nontaxable amounts, and otherwise how tax should be computed. Such regulations will be upheld if they are reasonable and not contrary to the language of a statute. *Shellcast Corp. v. White*, 477 So.2d 422 (Ala. 1985). Reg. 810-6-1-.125(2) is reasonable and in accordance with the language of §40-23-26(b).

The Taxpayer is a worthwhile civic organization. Unfortunately, because it failed to comply with Reg. 810-6-1-.125(2), and thus illegally absorbed the tax in the lump-sum ticket price, the Department's denial of the Taxpayer's refund petition must be affirmed.

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

Entered June 20, 2002.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: Duncan R. Crow, Esq.  
E.W. McKean, Jr., CPA  
Ginger Buchanan