

IEC ARAB ALABAMA, INC. 350 11th Street SW Arab, AL 35016-1770,	§ §	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
Taxpayer,	§	DOCKET NO. U. 98-507
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER

This appeal involves final assessments of State sellers use tax, State consumers use tax, and City of Arab use tax for January 1990 through December 1997. The Taxpayer paid the final assessments in full in November 1998, and then timely appealed to the Administrative Law Division.¹

An Opinion and Preliminary Order was entered on May 19, 2005 holding that the Taxpayer was only liable for the State and City of Arab use tax that accrued within three years before the preliminary assessments were entered by the Department. The Department was directed to recompute the Taxpayer's liabilities accordingly. The Department has responded that the Taxpayer is due refunds of State sellers use tax, State consumer use tax, and City of Arab use tax in the amounts of \$39,178.60, \$61,171.25, and \$156,849.51, respectively.²

¹ Code of Ala. 1975, §40-2A-7(b)(5)b. specifies that a taxpayer may appeal a final assessment to circuit court or to the Administrative Law Division even if the taxpayer pays the final assessment in issue before appealing. Taxpayers are not required to pay the tax due or post a bond before appealing a final assessment to the Administrative Law Division. They sometimes do, however, to stop interest from running, or, as in this case, to prevent default under a loan agreement.

² The Department determined that the sellers use tax due for the three years before the preliminary assessment was entered was \$6,083.48, that the consumers use tax due for the period was \$18,227.84, and that the City of Arab tax due for the period was \$46,728.07.
(continued)

The Department has also notified the Administrative Law Division that the Department stopped administering the City of Arab use tax on March 31, 2001. However, the Taxpayer timely appealed the City of Arab final assessment to the Administrative Law Division in November 1998, when the Department was administering the City's taxes. Code of Ala. 1975, §40-2A-7(b)(5)c. provides that if an appeal is timely filed, it "shall proceed as herein provided for appeals to the Administrative Law Division." Consequently, the Administrative Law Division had jurisdiction to hear and decide the Taxpayer's appeal of the City of Arab final assessment, notwithstanding that the Department no longer administers the City's taxes.

The dismissal of or refusal to hear the Taxpayer's appeal of the City of Arab final assessment would also constitute a denial of due process. The Taxpayer cannot be deprived of an established statutory right to pursue its appeal before the Administrative Law Division because the City of Arab unilaterally elected for the Department to stop administering its taxes after the Taxpayer's appeal was filed.

Code of Ala. 1975, §40-2A-7(c)(4) specifies that if the Department, the Administrative Law Division, or a circuit court determines that a refund is due, "the overpayment shall be refunded to the taxpayer by the state, county, municipality, or other entity to which the overpayment was distributed." The City of Arab use tax paid by the Taxpayer in November 1998 was distributed by the Department to the City of Arab. The City of Arab is thus liable to the Taxpayer for the overpaid City of Arab use tax in issue.

However, when interest is added to the net amounts overpaid by the Taxpayer on November 5, 1998, the refunds now due are slightly more than the total amounts paid by the Taxpayer.

The City of Arab, as a real party in interest, has by this Order been added as an intervenor in the case for purposes of appealing this Final Order to circuit court. See, Code of Ala. 1975, §40-2A-9(l). A copy of this Final Order will be served on the Mayor of the City of Arab and also the City Attorney.

The Taxpayer is entitled to refunds of State sellers use tax, State consumers use tax, and City of Arab use tax in the amounts of \$39,178.60, \$61,171.25, and \$156,849.51, respectively. Additional interest will also accrue from August 19, 2005. Judgment is entered accordingly.

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

Entered August 15, 2005.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: J. Wade Hope, Esq.
Blake A. Madison, Esq.
James Browder
Mayor Frank Lee Cox
McLaughlin & Edmondson, LLC, City Attorney