

JAMES E. BRYEN  
ALTERNATIVE GARAGE  
3024 3rd Avenue S.  
Birmingham, AL 35233-3004,

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

Taxpayer,

DOCKET NO. S. 99-125

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

### FINAL ORDER

The Revenue Department assessed sales tax against James E. Bryen, d/b/a Alternative Garage (ATaxpayer@) for January 1992 through March 1998. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, § 40-2A-7(b)(5)a. A hearing was conducted on March 24, 1999. Ben F. Hayley represented the Taxpayer. Assistant Counsel Wade Hope represented the Department.

The primary issue in this case is whether the Taxpayer is liable for sales tax he collected from his customers, but failed to remit to the Department. A second issue is whether the penalties assessed by the Department should be waived for reasonable cause.

The Taxpayer opened a foreign car repair shop in Birmingham, Alabama in 1983. Before he opened, the Taxpayer obtained city and county business licenses and a withholding tax number. The Taxpayer also visited the Revenue Department's Birmingham District Office to obtain a State sales tax license. A

Department employee informed the Taxpayer that as a small repair shop, he did not need a sales tax license. Rather, the employee advised the Taxpayer that he should pay sales tax when he purchased the repair parts from his vendors. The Department employee visited the Taxpayer's repair shop a few days later, and again informed him that he did not need a sales tax license.

Revenue Examiner Randy Boutwell visited the Taxpayer's business in the mid-1980's. The Taxpayer claims that Boutwell confirmed that as a small repair shop, the Taxpayer did not need a sales tax license.

Boutwell testified that he remembers visiting the Taxpayer's business, but does not remember telling him he did not need a sales tax license. Boutwell testified further, however, that the Department's policy at the time, as established by the Birmingham District Office Supervisors, was that a small repair shop would not be issued a sales tax license even though it made some retail sales. The rationale was that it was administratively unfeasible for the Department to administer small accounts that had a small volume of retail sales. Consequently, the Department instructed small repair businesses to pay sales tax when they purchased repair parts from their vendors.

From 1983 until he was audited in 1998, the Taxpayer paid sales tax when he purchased repair parts from his vendors. He then charged his customers sales tax on his charge for the repair parts.

The Revenue Department learned in 1998 that the Taxpayer was collecting

sales tax on repair parts, but not remitting the tax to the Department. The Department audited the Taxpayer and used his records to compute his liability for January 1992 through March 1998. The Department allowed a credit for sales tax the Taxpayer had paid to his vendors, and entered the final assessment in issue for the balance due, plus penalty and interest. The Taxpayer appealed.

The Taxpayer claims he should be relieved of liability because the Department advised him not to report and pay sales tax during the audit period. I disagree.

The Department assessed the Taxpayer for the difference between the sales tax he collected from his customers and the sales tax he paid to his suppliers. The Taxpayer had the use of that money during the audit period (and before), and the Department cannot and should not be estopped from collecting that amount from the Taxpayer, plus applicable interest. Maddox Tractor & Equipment Co. v. State, 69 So.2d 426 (1953)(Department cannot be estopped from collecting a tax due based on erroneous advice by a Department employee). The tax due, plus interest, is affirmed.

A penalty assessed by the Department may be waived for reasonable cause. Reasonable cause includes instances in which a taxpayer acts in good faith. Code of Ala. 1975, ' 40-2A-11(h).

The Taxpayer claims the Department notified him on at least two occasions that he did not need a sales tax license, and that he should not report and remit

sales tax to the Department. That claim is consistent with the Department's policy during the mid-1980's that a small repair shop would not be issued a sales tax license. The Taxpayer thus understood that he was not required to report and remit tax to the Department. Because the Taxpayer relied on advice from the Department, the penalty is waived for reasonable cause.

The final assessment, less the penalty, is affirmed. Judgment is entered against the Taxpayer for \$36,391.21. Additional interest is also due on the tax from the date of entry of the final assessment, December 30, 1998.

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

Entered June 18, 1999.

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BILL THOMPSON  
Chief Administrative Law Judge

BT: ks

cc: J. Wade Hope, Esq.  
Ben F. Hayley, Esq.  
James Browder