

UNLIMITED LEASING, INC.
3215 East Meighan Blvd.
P.O. Box 31
Gadsden, AL 35902-0031,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 99-438

FINAL ORDER

The Revenue Department assessed Unlimited Leasing, Inc. (ATaxpayer@) for State, Etowah County, and City of Gadsden sales tax for May 1998 through September 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 February 2, 2000. The Taxpayer-s representative was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Margaret McNeill represented the Department.

This case involves two issues:

(1) Should the Taxpayer-s appeal be dismissed because it was not timely filed within 30 days, as required by Code of Ala. 1975, ' 40-2A-7(b)(5)a.; and

(2) If the appeal is not dismissed for lack of jurisdiction, did the Department correctly compute and assess the Taxpayer-s liability using the best information available.

The Taxpayer failed to file State, Etowah County, and City of Gadsden sales tax returns for May through September 1998. The Department estimated the Taxpayer-s liability for those months by using its returns filed in prior months. The final assessments for State, Etowah County, and City of Gadsden sales tax were entered on June 3, 1999.

The Department mailed the final assessments by certified mail to the address on the Taxpayer's application for a sales tax license, 33215 East Meighan Boulevard, P.O. Box 31, Gadsden, Alabama 35902-0031. The U.S. Postal Service returned the final assessments to the Department on August 13, 1999, marked "forwarding address expired."

The Department remailed the final assessments to the residence of the owner of the corporation, Pat Herrera, on August 27, 1999. The Taxpayer's representative appealed the final assessments to the Administrative Law Division on September 9, 1999.

The Department filed a motion to dismiss the appeal because the Taxpayer failed to appeal within 30 days, as required by '40-2A-7(b)(5)a. As indicated, the final assessments were entered on June 3, 1999. The Taxpayer's appeal was not received by the Administrative Law Division until September 9, 1999.

The Taxpayer's representative claims that the Department knew that the Taxpayer had changed its mailing address to the owner's address before the final assessments were entered. The owner's address is 269 Karaway Hills, Gadsden, AL 35901. The representative argues that the final assessments should have been mailed to that address.

In support of his claim, the representative provided copies of two notices of tax due sent to the Taxpayer by the Department's Gadsden Taxpayer Service Center. Those notices, dated November 9, 1998 (before the final assessments were entered), were addressed to "Unlimited Leasing, Inc., 269 Karaway Hills, Gadsden, AL 35901."

The Department is required to mail a final assessment over \$500 by certified mail to a taxpayer's last known address. Code of Ala. 1975, '40-2A-7(b)(4)c. The notices of the tax due sent in November 1998 show that the Department's Gadsden Taxpayer

Service Center knew that the Taxpayer had changed its mailing address to the owners residence in (or before) November 1998. Unfortunately, that change of address was not forwarded to the Department's Sales Tax Assessment Section in Montgomery. Consequently, the Department initially mailed the final assessments to the Taxpayer's old address. After the final assessments were returned by the Postal Service, the Department apparently looked into the matter and found that the Taxpayer had a new mailing address. It remailed the final assessments to that new address. The Taxpayer duly appealed within two weeks of receiving the final assessments.

Because the final assessments were not initially mailed to the Taxpayer's last known address, and because the Taxpayer properly appealed within 30 days after the final assessments were correctly served, the Department's motion to dismiss is denied.

Concerning the merits of the case, the Taxpayer claims that an employee stole or destroyed its records in an effort to hide his criminal wrongdoing. The Taxpayer requests that the final assessments in issue should be dismissed so that correct sales tax returns may be prepared and filed. Unfortunately, the Taxpayer has not filed returns for the subject months, or otherwise offered evidence establishing that the estimated returns prepared by the Department are incorrect.

If a taxpayer fails to file a return, the Department may calculate the taxpayer's liability using the best information obtainable. Code of Ala. 1975, ' 40-2A-7(b)(1)a. On appeal, a final assessment based on the best information available is *prima facie* correct, and the burden is on the taxpayer to prove the assessment is incorrect. Code of Ala. 1975, ' 40-2A-7(b)(5)c. The Department can use any reasonable method to compute the

taxpayer's liability. The taxpayer cannot then complain that the liability so computed is inexact. Jones v. C.I.R., 903 F.2d 1301 (10th Cir. 1990); Denison v. C.I.R., 689 F.2d 777 (10th Cir. 1982); see also, State of Alabama v. Red Brahma Club, Inc., S. 92-171 (Admin. Law Div. 4/7/95), and State of Alabama v. William T. Gipson, P. 95-210 (Admin. Law Div. 1/26/96).

The Department in this case reasonably computed the Taxpayer's liability based on the best information available, the Taxpayer's prior sales tax returns. The Taxpayer failed to offer any evidence that the tax due as computed is incorrect. The final assessments are accordingly affirmed. Judgment is entered against the Taxpayer for State sales tax of \$24,208.75, Etowah County sales tax of \$3,026.09, and City of Gadsden sales tax of \$9,078.30. Additional applicable interest is also due from the date of entry of the final assessments, June 3, 1999.

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

Entered February 4, 2000.

BILL THOMPSON
Chief Administrative Law Judge

BT:ks

cc: J. Wade Hope, Esq.
Luther D. Abel, CPA
James Browder