

VILLAGE LAWNS, INC.  
COMMERCIAL TURF EQUIPMENT  
1119 Perry Hill Road  
Montgomery, AL 36109-5222,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 02-698

### FINAL ORDER

The Revenue Department assessed Village Lawns, Inc. (“Taxpayer”) for State sales and use tax for January 1999 through December 2001. 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 November 26, 2002. Bruce Holding and Tom Calendar represented the Taxpayer. Assistant Counsel Wade Hope represented the Department.

The Taxpayer operated a lawn care business in Montgomery, Alabama from 1995 until mid-1997. It occasionally sold riding lawnmowers during that period, on which it charged its customers a two percent sales tax.<sup>1</sup> The Taxpayer purchased a larger facility in mid-1997, and began selling substantially more riding lawnmowers and other items at that time.

Some of the Taxpayer’s customers questioned why the Taxpayer was charging two percent sales tax on its riding lawnmower sales instead of the one and one-half percent tax charged by other dealers. The Taxpayer inquired with the Revenue Department concerning the correct rate. The Taxpayer claims it was told by an unidentified Department employee that the one and one-half percent agricultural rate applied. Consequently, in

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<sup>1</sup>The Department considers riding lawnmowers to be motor vehicles subject to the reduced two percent rate levied at Code of Ala. 1975, ' 40-23-2(4).

September 1997, the Taxpayer began charging and collecting one and one-half percent sales tax on its riding lawnmower sales.

The Department audited the Taxpayer for the period in issue and assessed it for the difference between the one and one-half percent tax paid by the Taxpayer on its riding lawnmower sales, and the two percent tax due. The Department also assessed the Taxpayer for use tax on office equipment and supplies, and on fertilizer purchased tax-free and used by the Taxpayer in its lawn care business.

The Taxpayer does not contest the use tax final assessment. It also concedes that two percent was the correct rate on its riding lawnmower sales. It argues, however, that it should not be required to pay the additional one-half percent sales tax because it made a good faith effort to determine the correct tax rate, and was told by an unidentified Department employee that the one and one-half percent rate applied.

I sympathize with the Taxpayer. Alabama law is clear, however, that the Department cannot be estopped from collecting the correct tax from a taxpayer, even if the taxpayer received incorrect advice or information from a Department employee. *Community Action Agency of Huntsville, Madison County, Inc. v. State*, 406 So.2d 890 (Ala. 1981). I note that the Department correctly did not assess the Taxpayer for penalty on the underpayment. Interest is required by statute and cannot be waived. Code of Ala. 1975, §40-1-44.

The final assessments are affirmed. Judgment is entered against the Taxpayer for use tax and interest of \$2,325.69, and sales tax and interest of \$11,328.17.

The Taxpayer claims that it cannot pay the entire amount in a lump sum. Under the circumstances, the Taxpayer should be allowed to pay in installments. However, the Administrative Law Division does not have jurisdiction over collection matters. The

Department will contact the Taxpayer in due course concerning payment of the amounts owed.

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

Entered January 15, 2003.

BILL THOMPSON  
Chief Administrative Law Judge