STONE BRIDGE FARMS, LLC 157 COUNTY ROAD 717 CULLMAN, AL 35055,	§	STATE OF ALABAMA ALABAMA TAX TRIBUNAL
Taxpayer,	§	DOCKET NO. S. 14-510
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER

The Revenue Department assessed Stone Bridge Farms, LLC ("Taxpayer") for lodgings tax for January through June 2013. The Taxpayer appealed to the Department's Administrative Law Division, now the Alabama Tax Tribunal, pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on November 4, 2014. The Taxpayer's representative was notified of the hearing, but failed to attend. Assistant Counsel Christy Edwards represented the Department.

The Taxpayer specializes in hosting after-rehearsal dinners, weddings, wedding receptions, etc. at its facility located in rural Cullman County, Alabama. The Taxpayer's facility includes a wedding chapel, banquet room, kitchen, and landscaped outdoor areas, including a lakeside area suitable for weddings and related events. Various businesses, clubs, church groups, etc. also periodically hold meetings in the Taxpayer's banquet room.

The Taxpayer began renting three chalets on the property to overnight guests in January 2013. The Taxpayer concurrently began filing lodging tax returns and reporting and paying State lodgings tax on the chalet rental proceeds.

The Department audited the Taxpayer and assessed the lodgings tax in issue based on the Taxpayer's receipts derived from its wedding chapel, banquet room, and the other events held at the Taxpayer's facility. The Taxpayer appealed.

The Department argues that the Taxpayer's receipts from renting all of its facilities became subject to lodgings tax when the Taxpayer started renting the chalets in January 2013. The Department's position is based on Department Reg. 810-6-5.-13(8), which reads in part – "Charges made for the use of ball rooms, dining rooms, club rooms, sample rooms, conference rooms, wedding chapels, or other space located on the premises of any place where rooms or other accommodations are offered for the use of travelers, tourists or other transients, are subject to the lodgings tax."

A Department regulation should be given weight in interpreting a statute, but if the regulation is inconsistent with or contrary to Alabama law, it must be rejected. *Ex parte Uniroyal Tire Co.*, 779 So.2d 227 (Ala. 2000). As explained below, Reg. 810-6-5-.13(8) unduly expands the scope of the lodgings tax levy beyond the language in the levy statute, Code of Ala. 1975, §40-26-1(a), and is thus invalid.

Alabama's transient occupancy tax, or lodgings tax as it is referred to in Reg. 810-6-5-.13, is levied at §40-26-1(a), and reads in pertinent part as follows:

> There is levied and imposed, in addition to all other taxes of every kind now imposed by law, a privilege or license tax upon every person, firm, or corporation engaging in the business of renting or furnishing any room or rooms, lodging, or accommodations to transients in any hotel, motel, inn, tourist camp, tourist cabin, or any other place. . .

The clear intent of the Legislature, as expressed in the language used in §40-26-1(a), is for the lodgings tax to apply to the proceeds from the rental of rooms, lodgings, etc. used as living quarters for overnight stays or temporary abodes or places to live. This is illustrated by the use of the words "room or rooms, lodgings, or accommodations" in the statute. Those words are not defined in the lodgings tax statutes, and thus must be given

their common, everyday definitions. *State v. American Brass, Inc.*, 628 So.2d 920 (1993).

A "room" can be broadly defined as "[a] space that is or may be occupied." The American Heritage Dictionary, 4th Ed. at 1206, 1207. But that same source, at 1207, more specifically defines "rooms" as "[l]iving quarters; lodgings."

"Lodge" is defined as "[a] cottage or cabin used as a temporary abode or shelter." "Lodging" is defined as "[a] place to live. Sleeping accommodations." A "lodger" is defined as "[o]ne that lodges, esp. one who rents and lives in a furnished room." The American Heritage Dictionary, 4th Ed. at 813. "Accommodation" is defined as "[r]oom and board; lodgings." The American Heritage Dictionary, 4th Ed. at 8. Finally, a "transient" is defined as "[o]ne that is transient, esp. a hotel guest or boarder of brief duration." The American Heritage Dictionary, 4th Ed. at 1460.

Reading the above definitions together and in context, it is clear that the lodgings tax was intended to apply only to a room or other closed, private area which a transient uses as a temporary living quarter or abode in which to live and use as sleeping accommodations for a short period. Nothing in the language of §40-26-1, et seq. suggests that it was intended to apply to proceeds from the rental of wedding chapels, banquet or meeting rooms, or other areas made available for public or private group events. Transients do not temporarily reside or live in conference rooms, wedding chapels, etc.

The above is confirmed by the types of rooms, lodgings, or accommodations listed in §40-26-1(a), i.e., "any hotel, motel, inn, tourist camp, tourist cabin or any other place. . . " rented to transients. All of the above are rooms rented to transients for overnight stays. If the Legislature had intended for the tax to apply to the rental of wedding chapels, banquet or conference rooms, etc., it clearly could have added those facilities to the above list. It

did not do so, which can only indicate that those types of facilities were not intended to be subject to the lodgings tax. The above conclusion is supported by the rule of statutory construction that in case of doubt, a tax levy should be strictly construed for the taxpayer and against the government. *City of Arab v. Cherokee Elec. Co-op.*, 673 So.2d 751 (Ala. 1995).

As discussed, Reg. 810-6-5-.13(8) provides that charges for the use of ball rooms, conference rooms, wedding chapels, etc. are subject to the lodgings tax, but only if those facilities are "located on the premises of any place where rooms or other accommodations are offered for the use" of transients. It logically follows that the receipts from ball rooms, conference rooms, wedding chapels, etc. that are not located on the premises of any place, i.e., a hotel, motel, etc., that rents rooms to transients are not subject to the lodgings tax. That is confirmed by the fact that the Department did not assess the Taxpayer for the lodgings tax on its proceeds from the banquet room, wedding chapel, and its other facilities before it began renting the chalets for overnight stays in January 2013.

The fact that paragraph (8) of the regulation distinguishes between "ballrooms, dining rooms, . . .," and "any place where rooms or other accommodations are offered" to transients, also illustrates that the types of rooms are different, the former being nontaxable and the latter being taxable.

I see no principled reason why the otherwise nontaxable receipts from the rental of conference rooms, wedding chapels, etc. would become subject to the lodgings tax only because the owner also offers rooms "on the premises" (whatever that may include) to transients for overnight stays. Like all tax levies, the §40-26-1(a) lodgings tax levy must be strictly construed to apply only to the specified activity taxed in the statute, i.e., the rental of

overnight sleeping accommodations to transients. A taxpayer's receipts from an activity not subject to the lodgings tax do not become taxable simply because the taxpayer has receipts from an activity, i.e., the rental of bedrooms for overnight stays, that is subject to the tax. In that regard, the scope of the lodgings tax levy is similar to the scope of the amusement gross receipts sales tax levied at Code of Ala. 1975, §40-23-2(2).

The amusement gross receipts sales tax applies to receipts derived from operating public places of entertainment or amusement such as pool halls, bowling alleys, and theatres, or where an admission fee is charged. In several prior cases, the Revenue Department taxed all of a taxpayer's receipts, even though only a portion was derived from a public place of entertainment or amusement operated by the taxpayer. The Department's Administrative Law Division, now the Tax Tribunal, consistently held in those cases that only the receipts derived from the taxpayer's public place of amusement were subject to the tax.

> To begin, the fact that a small part of the Taxpayer's business, the Mommy and Me service, was unquestionably open to the public, and thus subject to the gross receipts sales tax, did not per se cause all of the Taxpayer's activities to be subject to the tax. Rather, only proceeds derived from that part of a taxpayer's business that is open or offered to the public are subject to the tax. See generally, *State of Alabama v. Huntsville Baseball Club, Inc. and Birmingham Baseball Club, Inc.*, S. 92-208 and S. 92-170 (Admin Law Div. 2/23/1994) (Revenue received by baseball clubs from selling advertising space on outfield walls, billboards, tickets, etc. was distinguishable from the clubs' taxable admission fees, and thus not taxable, because the revenue was not derived from the public amusement or entertainment offered by the clubs); *Craft Development Corp. v. State of Alabama*, S. 91-142 (Admin. Law Div. 10/22/1991) (Membership dues paid by private country club members were not subject to the tax, even though the club's golf course was open to the public); and *Gerald Garrison v. State of Alabama*, S. 86-108 (Admin. Law Div. 10/16/1986) (A golf pro's fees for giving private golf lessons were not taxable, even though the pro also operated a miniature golf course and driving range that was open to the public.).

2MC v. State of Alabama, Docket No. S. 07-587 (Admin. Law Div. 3/11/2008) at 5.

Likewise, only a taxpayer's receipts from the rental of rooms or accommodations to transients as living or sleeping quarters are subject to the §40-26-1(a) lodgings tax. A taxpayer's receipts from the rental of a wedding chapel, conference rooms, etc. are not derived from the rental of rooms to transients as living or sleeping quarters, and thus are not subject to the lodgings tax.

Research indicates that the Department's Administrative Law Division had in prior cases held that the lodgings tax applied to the rental of conference or banquet rooms for private parties, family reunions, etc. See, *Clifton v. State of Alabama*, Docket No. S. 04-299 (Admin. Law Div. 10/27/2004); *2MC, Inc.*, supra. Upon further review and closer analysis, I now believe those cases were wrongly decided, at least concerning the scope of the lodgings tax. The above analysis convinces me that the lodgings tax levy should be strictly construed in favor of the taxpayer to apply only to the receipts derived from rooms in hotels, motels, etc. used by transients as living quarters or a temporary abode in which to sleep and otherwise reside.

Because the Taxpayer's separately-stated charges for the use of its wedding chapel, banquet room, and its other facilities, other than the chalets, are not subject to Alabama's lodgings tax, the final assessment in issue is voided. 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 December 10, 2014.

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BILL THOMPSON
Chief Tax Tribunal Judge

bt:dr
cc: Christy O. Edwards, Esq.
Ron Foust