

RANDY HENSON  
d/b/a FRIENDSHIP AUTOMOTIVE  
1801 FRIENDSHIP ROAD  
OXFORD, AL 36203-3229,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA  
ALABAMA TAX TRIBUNAL

DOCKET NO. S. 14-492

### FINAL ORDER

The Revenue Department entered State and local sales tax final assessments against Randy Henson (“Taxpayer”), d/b/a Friendship Automotive, for July 2009 through July 2012 and January through July 2012, respectively. The Taxpayer appealed to the 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 13, 2014. The Taxpayer attended the hearing. Assistant Counsel Mary Martin Majors represented the Department.

The Taxpayer owned and operated Friendship Automotive in Oxford, Alabama during the period in issue, July 2009 through July 2012. The business performed oil changes and made minor automobile engine repairs. The Taxpayer also opened two other locations in early 2012, Henson Automotive, which was also in Oxford, and Greenbrier Automotive in Anniston, Alabama.

The Taxpayer applied to the Revenue Department for and was issued an Alabama sales tax license/number, effective October 10, 2010. The Taxpayer thereafter failed to file sales tax returns. A Department Collection’s Division agent called on the Taxpayer in February 2011. The Taxpayer told the agent at that time that he had not yet opened his

business, and that he expected to open by June 2011.<sup>1</sup> The Taxpayer also failed to file sales tax returns after June 2011, and a Collection's Division agent again visited the Taxpayer's business on September 30, 2011. The Taxpayer told the agent at that time that his business had never opened, and that his sales tax account should be closed. The Department subsequently closed the Taxpayer's account.

A Department examiner audited the Taxpayer for sales tax beginning in mid-2012. The Taxpayer had failed to file sales tax returns for any of his three locations before the audit. The examiner requested the Taxpayer's sales and purchase records for the audit period. The Taxpayer provided sales tickets, purchase invoices, and monthly sales summary sheets for Friendship Automotive for January 2011 through July 2012. He also provided records for Henson Automotive for January through July 2012, and for Greenbrier Automotive for March through July 2012.

The examiner initially reviewed the Taxpayer's sales invoices and discovered that the Taxpayer had charged his customers a lump-sum amount that included both parts and labor. She notified the Taxpayer that he should separately state his labor on his invoices, and that if he did not, he would owe sales tax on the entire lump-sum amount.

The examiner determined that the Taxpayer's sales invoices were substantially complete. She compared a three month sampling of the invoices to the Taxpayer's monthly sales summaries for those months, and determined that the summaries were also substantially accurate.

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<sup>1</sup> There is evidence that Friendship Automotive had purchased items for resale from vendors beginning in October 2005.

Because the Taxpayer had failed to provide any Friendship Automotive sales invoices for the months before 2011, the examiner computed the business's average monthly sales for the months for which she did have records – January 2011 through July 2012. She then projected the average monthly sales amount for those months to the months before 2011 to estimate the tax due in those months. She also averaged the sales at the Taxpayer's other two stores for the months in 2012 for which she had good records for those stores, and then projected the average monthly sales amount to the months for which good records were not provided, i.e., January through March 2012.

The examiner next reviewed the Taxpayer's purchase invoices, which showed that the Taxpayer had paid sales tax when he purchased items from his vendors. She informed the Taxpayer that he should purchase the items, i.e., oil filters, repair parts, etc., tax-free using a sales tax number, and then charge his customers sales tax when he resells the items to his customers. The examiner subsequently obtained records from the Taxpayer's two primary vendors, Auto Zone and Advanced Auto Parts, and allowed the Taxpayer a credit for the sale tax he had paid to those stores during the audit period.

The Taxpayer argues that the audit is flawed because the examiner used his sales for January, February, and March to compute his average monthly sales for the entire audit period. He claims that his sales were higher in those months because his customers received their income tax refunds in those months, and thus had money available to spend on their cars. He also contends that he was not allowed a credit for sales tax he paid to vendors other than Auto Zone and Advanced Auto Parts.

The Taxpayer in this case failed to keep complete records for the entire audit period. In such cases, the Revenue Department can use any reasonable method to compute the

taxpayer's correct liability. In *Melton, d/b/a Poplar Dawg's Eatery v. State of Alabama*, Docket No. S. 10-376 (Admin. Law Div. 11/4/2010), the Administrative Law Division of the Revenue Department, now the Tax Tribunal, held as follows:

[T]he Department is authorized to compute a taxpayer's correct liability using the most accurate and complete information obtainable. Code of Ala. 1975, §40-2A-7(b)(1)a. The Department can also use any reasonable method to compute the liability, and the taxpayer, having failed in the duty to keep good records, cannot later complain that the records and/or method used by the Department is improper or does not reach a correct result. *Jones v. CIR*, 903 F.3d 1301 (10th Cir. 1990); *State v. Ludlum*, 384 So.2d 1089 (Ala. Civ. App.), cert. denied, 384 So.2d 1094 (Ala. 1980) (A taxpayer must keep records showing the business transacted, and if the taxpayer fails to keep such records, the taxpayer must suffer the penalty for noncompliance).

The Taxpayer did provide reasonably complete and accurate records for a portion of the audit period. The examiner used those records to determine the Taxpayer's average monthly sales. She then projected that average over the months for which records were not provided. She allowed a credit for the sales tax the Taxpayer had paid to his primary vendors to determine the net tax due. The Department's computations are based on the Taxpayer's own records, and are reasonable under the circumstances.

The Taxpayer argues that the examiner improperly used January, February, and March to compute his average monthly sales because his sales are higher in those months. The Taxpayer's sales may have been higher in those months, but the examiner used a nineteen month period, January 2011 through July 2012, to compute the Taxpayer's average monthly sales. The use of that period is clearly reflective of the Taxpayer's sales for the entire audit period.

The Taxpayer also claims that he paid sales tax when he purchased items from vendors other than Auto Zone and Advance Auto Parts. Again, that may be true, but he

failed to provide any sales receipts or other records showing that he had paid sales tax to other vendors, nor does the evidence show that he provided the examiner with the names of any other vendors to whom he may have paid sales tax. Without such records and/or information, any additional credit for sales taxes paid cannot be allowed.

The Taxpayer claims that he paid sales tax when he purchased the repair parts, oil filters, etc. from his vendors, and then sold the items to his customers for the same price, without mark-up. As discussed, however, the Taxpayer failed to separately itemize his charges for the taxable parts, oil filters, etc., and his nontaxable labor charges, as required by Department Reg. 810-6-1-.08(1). That regulation specifies that “[w]hen the repairman does not itemize parts in his billing, any amount charged for labor or service and included in the lump sum billing is to be included in the taxable amount.”

Alabama’s appellate courts have also held that a taxpayer subject to sales tax has a duty to keep adequate records from which the Revenue Department can accurately compute and verify the taxpayer’s correct liability. And if a taxpayer fails to do so, the taxpayer must suffer the penalty of noncompliance and pay sales tax on the sales not properly documented as exempt or nontaxable. *State v. Mack*, 411 So.2d 799 (Ala. Civ. App. 1982); *State v. Ludlum*, 384 So.2d 1089 (Ala. Civ. App.), cert. denied, 384 So.2d 1094 (Ala. 1980).

Finally, the Taxpayer applied for and was issued a sales tax license by the Department in 2010. The Department contacted the Taxpayer in February 2011 after he failed to file sales tax returns. The Taxpayer told the Department agent that he had not yet opened, although he had already opened, and there is evidence that he had purchased items from vendors in the name of Friendship Automotive as early as 2005. The

Department contacted the Taxpayer again in September 2011, and despite having been in business for a substantial period, the Taxpayer told the agent that he still had not opened and that his sales tax account should be closed. Given those facts, the Taxpayer has only himself to blame for the final assessments in issue.

If the Taxpayer believes he can obtain records from his other vendors showing that he paid sales tax on the items he purchased from those vendors during the audit period, he should apply for a rehearing within 15 days of this Order. He will then be allowed a reasonable time to obtain and submit those records.

The final assessments are affirmed. Judgment is entered against the Taxpayer for State and local sales tax, penalties, and interest of \$38,015.71 and \$9,685.19, respectively. Additional interest is also due from the date the final assessments were entered, April 9, 2014.

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: Mary Martin Majors, Esq.  
Randy Henson