

RACEON, INC. §
1430 9TH AVENUE NORTH §
BESSEMER, AL 35020-5684, §

STATE OF ALABAMA
ALABAMA TAX TRIBUNAL

DOCKET NO. S. 14-1023

Taxpayer, §

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE. §

FINAL ORDER

The Revenue Department assessed Raceon, Inc. ("Taxpayer") for State sales tax for July 2010 through June 2013. The Taxpayer appealed to the Alabama Tax Tribunal pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on December 18, 2014. The Taxpayer was notified of the hearing by certified mail, but failed to attend. Assistant Counsel Mary Martin Majors represented the Department.

The Taxpayer operated a convenience store in Bessemer, Alabama during the period in issue. A Department examiner audited the Taxpayer for sales tax for the period and requested the Taxpayer's sales and purchase records, bank records, and all other sale tax related records. The Taxpayer provided some purchase invoices and bank statements, but no cash register tapes or other sales records.

The examiner determined that the purchase invoices provided by the Taxpayer were incomplete. He consequently obtained purchase information from three of the Taxpayer's primary vendors. That purchase information revealed that the Taxpayer's monthly wholesale purchases consistently and substantially exceeded its reported monthly retail sales. The examiner consequently computed the Taxpayer's liability using a purchase mark-up audit.

The purchase mark-up audit is a simple, oft-used Department method of determining a taxpayer's sales tax liability when the taxpayer fails to keep accurate sales records. See generally, *GHF, Inc. v. State of Alabama*, S. 09-1221 (Admin. Law Div. 8/10/10); *Thomas v. State of Alabama*, S. 10-217 (Admin. Law Div. O.P.O. 5/18/10); *Alsedeh v. State of Alabama*, S. 03-549 (Admin. Law Div. 11/3/04).

In this case, the Department examiner used the purchase invoices from the Taxpayer's three primary vendors to determine the Taxpayer's wholesale purchases for the subject period. Specifically, he selected invoices for 17 months of the period to compute the Taxpayer's average monthly purchases. He then reviewed the actual prices the Taxpayer charged for its tobacco products to arrive at an average tobacco mark-up of 109.5 percent. He applied the standard IRS mark-up of 119.7 percent for the remaining products sold by the Taxpayer. The Taxpayer's average monthly sales in the sample months was \$26,178.98. That amount was projected over the entire audit period to determine the Taxpayer's total retail sales. Tax due was computed on those sales to arrive at the additional tax due. Interest but no penalties were added to the tax due to arrive at the total amount due.

The Taxpayer argues on appeal that it was not allowed a credit for theft. It claims that its store is located in a high crime area, and that its inventory should accordingly be reduced by 15 percent.

All retailers subject to Alabama sales tax are statutorily required to keep complete accurate sales, purchase, and other records from which their correct sales tax liability can be computed. Code of Ala. 1975, §§40-2A-7(a)(1) and 40-23-9. A retailer's duty to keep sales records is straightforward and simple. The retailer must record all sales on a cash

register z-tape and/or on customer invoices or receipts, which may then be compiled onto a monthly sales journal. It is commonly understood that such records must be maintained to allow the Department to verify that the correct amount of sales tax has been reported and paid.

The Taxpayer in this case admittedly failed to provide complete sales records. In such cases, the 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).

Because the Taxpayer in this case failed to maintain adequate records from which its sales could be accurately computed or verified, the Department examiner correctly conducted a purchase mark-up audit to reasonably compute the Taxpayer's liability for the audit period. The tax due as computed by the audit is by its nature an estimate, but the examiner of necessity estimated the Taxpayer's liability because the Taxpayer failed to maintain adequate records. As discussed, because the Taxpayer failed to maintain good records, as required by Alabama law, it cannot now complain that the Department's computations must be rejected as inexact estimates.

The Taxpayer may be correct that its store is located in a high crime area. The Taxpayer failed, however, to present specific evidence of theft during the audit period. The Department examiner also explained that the IRS mark-up takes into account an estimated amount for spoilage, theft, personal use, etc.

This case is also unusual because in most all sales tax appeals heard by the Tax Tribunal, previously the Revenue Department's Administrative Law Division, in which the taxpayer failed to maintain adequate sales records, the Department had consistently added a 5 percent negligence penalty, if not the 50 percent fraud penalty. As indicated, the Department did not apply a penalty in this case.

The final assessment is affirmed. Judgment is entered against the Taxpayer for tax and interest of \$20,923.06. Additional interest is also due from the date the final assessment was entered, September 18, 2014.

Entered December 22, 2014.

BILL THOMPSON
Chief Tax Tribunal Judge

bt:dr

cc: Mary Martin Majors, Esq.
Robert Gudman, EA