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 DENYING DEPARTMENT'S APPLICATION FOR REHEARING

The Revenue Department assessed Stone Bridge Farms, LLC ("Taxpayer") for State lodgings tax for January through June 2013. A hearing was conducted on November 4, 2014, and a Final Order was entered on December 10, 2014 voiding the final assessment. The Department has timely applied for a rehearing.

The Taxpayer specializes in hosting weddings, rehearsal dinners, receptions, etc. at its facility in rural Cullman County, Alabama. The facility includes a wedding chapel, a banquet room, and other buildings/areas that the Taxpayer rents to its customers. It is undisputed that before the months in issue, those proceeds were not subject to Alabama's lodgings tax. The Taxpayer began renting three chalets on its property to overnight guests in January 2013. It also began filing State lodgings tax returns and paying State lodgings tax on its chalet rental proceeds at that time.

The Department audited the Taxpayer and assessed it for additional lodgings tax beginning in January 2013 on the proceeds from its rental of the wedding chapel, banquet room, etc. The Department's position, as stated in its Answer filed with the Department's Administrative Law Division, now the Tax Tribunal, is as follows:

> Ala. Tax Regulation 810-6-5-.13 provides that charges 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. When the Taxpayer completed the chalets in January 2013, rental charges for wedding and other special events held on the property became subject to the lodgings tax.

The Taxpayer's CEO, who had appealed the final assessment to the Department's Administrative Law Division, now the Tax Tribunal, was notified of the November 4, 2014 hearing, but did not attend. As indicated, a Final Order was subsequently entered holding that Reg. 810-6-5-.13(8) was invalid, and consequently voiding the final assessment.

The Department does not argue on rehearing that Reg. 810-6-5-.13(8) is correct, or that the legal analysis and resulting holding in the Final Order is otherwise incorrect. Rather, it contends that because the Taxpayer's representative failed to attend and present evidence at the November 4 hearing, its final assessment must be affirmed. I disagree.

I agree that if a taxpayer disputes a final assessment on factual grounds, the taxpayer must present evidence that the final assessment is incorrect. For example, if the Department assesses a taxpayer for income tax based on its factual finding that the taxpayer was domiciled in Alabama in a given tax year, the burden would be on the taxpayer to present evidence to the contrary. The law governing the Tax Tribunal also specifies that "[i]n the case of an issue of fact, the taxpayer shall have the burden of persuasion by a preponderance of the evidence. . . ." Code of Ala. 1975, §40-2B-1(k)(7).

This case can be distinguished, however, because the relevant facts, as stated in the Department's Answer, are not disputed, and the case involves a purely legal issue. That is, the case does not involve a disputed issue of fact.

A taxpayer invokes the jurisdiction of the Tribunal by timely filing a notice of appeal with the Tribunal. Code of Ala. 1975, §40-2B-1(h)(1). The Taxpayer did so in this case.

The Tribunal thus had jurisdiction to decide the Taxpayer's appeal. A notice of appeal should include the taxpayer's basis on which relief is sought, but an appeal that does not include that information is still "sufficient to invoke the jurisdiction of the Alabama Tax Tribunal." The Tribunal judge "may require a taxpayer to file an amended notice of appeal if more information is deemed necessary." See again, §40-2B-1(h)(1). The Tribunal did not deem additional information necessary in this case because, as discussed, the case involves only a question of law. The validity of Reg. 810-6-5-.13(8) was also before the Tribunal because the Department cited the regulation in its Answer, i.e., pleading, as the legal basis for the final assessment in issue.

The Alabama Legislature has empowered the Tax Tribunal to increase or decrease a final assessment on appeal "to reflect the correct amount due." Code of Ala. 1975, §40-2A-7(b)(5)d.1. The correct additional amount due in this case is $0 because under Alabama's lodgings tax levy statute, Code of Ala. 1975, §40-26-1(a), the gross proceeds from the rental or use of wedding chapels, banquet or conference rooms, etc. are not subject to lodgings tax. As explained in the Final Order, the fact that the Taxpayer also rents rooms to overnight guests, the receipts from which are subject to the lodgings tax, does not make all of the Taxpayer's otherwise nontaxable receipts subject to the tax.

Tribunal Reg. 887-X-1-.6 also provides that a Tribunal final order may "grant such relief and invoke such remedies as deemed necessary by the Tribunal Judge for a fair and complete resolution" of the case. It cannot be disputed that striking down a Revenue Department regulation that is contrary to Alabama law, and thereby voiding a final assessment based on that erroneous regulation, constitutes a fair resolution of a case. Fundamental fairness mandates that a taxpayer should not be required to pay a tax that is

not due under Alabama law.

The Department argues that the Tribunal "does not have the authority to place the burden on the Department to prove the validity of its assessments, ..." Department's motion for rehearing at 2. I agree, but the Tribunal has not done so in this case. Rather, the Tribunal has only reviewed the lodgings tax levy and a Department regulation interpreting that levy, and based thereon determined that the Taxpayer is not liable for the tax in issue under Alabama law.

The Department also contends that by striking down a portion of Reg. 810-6-5-.13, the Tribunal is "effectively becoming an advocate for the Taxpayer." Department's Motion for Rehearing at 2. I disagree. The Tribunal has not acted as an advocate for the Taxpayer in this case, nor should it improperly favor the Department or the taxpayer in any appeal. Rather, the Tribunal's duty is to fairly, fully, and impartially decide cases based on the facts and the applicable Alabama law. "By establishing an independent Alabama Tax Tribunal, . . . this chapter provides taxpayers with a means of resolving controversies that insures both the appearance and the reality of due process and fundamental fairness." Code of Ala. 1975, §40-2B-1(a). That is, the Tribunal should be an advocate for fundamental fairness and the correct interpretation of Alabama's tax laws. If the taxpayer benefits from the decision, so be it.

The Taxpayer's CEO filed the Taxpayer's notice of appeal in this case pro se. The Alabama legislature clearly envisioned that taxpayers can represent themselves pro se before the Tax Tribunal because the Act that created the Tribunal, Act 2014-146, specifies that "[a]ppearances in proceedings conducted by the Alabama Tax Tribunal may be by the taxpayer; . . ." Code of Ala. 1975, §40-2B-1(n)(1). The above is confirmed by an article in

the January 2015 edition of *Business Alabama* magazine, "Long Road to Tax Fairness," in which a primary author of Act 2014-146, Senator Paul Sanford (R-Madison), discusses the intent of the Act. According to Senator Sanford, the original version of the legislation was geared too much towards large corporations with legal departments, and was not user friendly to small businesses or individual taxpayers. He consequently amended the bill to correct that problem.

> The original version, (Sanford) says, was cumbersome and intimidating for citizens and small business owners because it proposed a more formalized process rather than the casual atmosphere that had always existed for the tax appeal process.
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> "Most people don't know, but the average amount that goes before the tax appeals process is under $10,000," Sanford says. "And what we had crafted, the original legislation, was a monstrous 100-page document that I felt was geared more to larger businesses and multi-jurisdictional areas with legal departments."
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> He says the earlier drafts also mandated that a citizen or business owner seek legal or CPA advice for an appeal.
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> "That costs $150 to $200 an hour in legal or CPA fees," Sanford says. "To me, that's not beneficial to citizens or small business owners." Now, people can still represent themselves if that's what they choose.
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> "We scaled it back to create a more taxpayer-friendly situation for our state," Sanford says. "It will have long-term impact on businesses."

The Department's position in this case flies in the face of what Senator Sanford and the Legislature as a whole intended. The Department argues that the Taxpayer in this case should be thrown out of court, and consequently made to pay tax that is not due under Alabama law, because the Taxpayer's pro se representative may not have properly plead the Taxpayer's case. It that position is accepted, then small businesses and non-

lawyer taxpayers could fall prey to procedural and other legal traps, and would in practical effect be forced to hire an experienced attorney to represent them in an appeal before the Tribunal, which is clearly contrary to the intent of the Legislature.

The fact that the Taxpayer's representative failed to attend the hearing is also of no consequence. Individual taxpayers that represent themselves or their small businesses before the Tax Tribunal (previously the Department's Administrative Law Division) sometimes fail for a variety of reasons to attend a hearing before the Tribunal. Those pro se individuals may not be able to take off from work or leave their small business to travel to Montgomery for a hearing, or they may have to tend to an unexpected business or personal emergency, or they may simply be intimidated at the thought of having to represent themselves before a judge at a "formal" court proceeding.

As discussed, if an appeal of a final assessment involves a factual dispute, the burden is on the taxpayer to appear and present evidence disputing the final assessment, and if the taxpayer failed to do so, the final assessment must be affirmed. But that is not the case if the appeal involves a purely legal issue, as in this case. The validity of Reg. 810-6-5-.13 is in issue in this case, the Tribunal has jurisdiction to decide that legal issue, and it is irrelevant that the Taxpayer's representative did not attend the hearing in the case.

Because many CPAs also represent taxpayers before the Tribunal, the Tribunal contacted the Alabama Society of CPAs ("ASCPA") for feedback in finalizing the Tribunal's regulations. The Chairman of ASCPA's State Taxation Committee expressed concern that the regulations should be written with non-lawyer representatives in mind so that such representatives would not be at a disadvantage to the legal training of the Department's attorneys. An article written by the Chairman that appeared in the August 2014 edition of

Alabama CPA Magazine reads in part as follow:

> The Alabama Tax Tribunal, being a new quasi-court, required the issuance of regulations to provide the rules and procedures for appeals to the tribunal. The daunting task of writing the tribunal regulations fell to Chief Judge Bill Thompson. Judge Thompson approached interested parties, including Alabama State Bar representatives, the Department of Revenue Legal Division and the ASCPA State Tax Committee, for help in reviewing the proposed regulations. The ASCPA Tax Committee discussed with Judge Thompson their concern that if the tribunal rules were not written with non-attorney taxpayers and their representatives in mind, their lack of knowledge about civil court procedures would limit their access to the tribunal, or at the very least put them at a distinct disadvantage to the legal training of the Department's attorneys. The ASCPA Tax Committee felt non-attorneys were especially vulnerable because of their lack of knowledge of the rules of evidence in civil court proceedings. The ASCPA Tax Committee consequently asked Judge Thompson to consider leveling the playing field for small business and individual taxpayers appealing to the tribunal.
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> Judge Thompson took to heart the ASCPA State Tax Committee's concerns in the recently completed proposed regulations. This is clearly evident in proposed regulation 5, which begins “the tax tribunal is not bound by the rules of evidence applicable in civil cases in circuit court. The tax tribunal may, at the discretion of the tax tribunal judge, admit evidence, including hearsay, that is probative and relevant to a material fact at issue.” This language, in this author’s opinion, neutralizes what could have been a powerful weapon in the hands of the Department’s attorneys to exclude evidence supporting the taxpayer’s case on technical procedural issues instead of considering the probative weight of the evidence being excluded.

Tribunal Reg. 887-X-1-4(5) also addresses pro se taxpayers or non-lawyer taxpayer representatives, and in substance requires a Tribunal judge to assist non-lawyer taxpayers and representatives so as to ensure a fair hearing. The regulation reads as follows:

> Hearings involving taxpayers that appear pro se or that are represented by an authorized representative who is not an attorney shall be informal in nature. To ensure a fair hearing in such cases, the Tax Tribunal Judge may explain to the pro se taxpayer or the taxpayer’s non-attorney authorized representative the general procedures to be followed in the hearing, the legal issue or issues involved in the case, and the facts that are generally relevant in deciding the legal issue or issues. The intent of this subsection is to ensure that all taxpayers will receive a fair hearing, and that taxpayers and

> their non-attorney authorized representative fully understand the legal issue or issues and the relevant facts involved in the case.

In my 38-plus years as an employee of the Revenue Department, first as an assistant counsel and then for 31-plus years as the Department's Chief Administrative Law Judge, I personally observed that the Department's employees, and especially those in its operating divisions, almost universally applied the proverbial Golden Rule and took the position that a taxpayer should only pay the correct tax due, nothing more or less.[1] Unfortunately, it appears that this case is an exception to that commendable mindset. Rather, the Department's position is that the Taxpayer should be required to pay lodgings tax that isn't due under Alabama law based on what most citizens of Alabama would consider a procedural or technical trap.

[1] Non-lawyer business owners and individuals have represented themselves in literally thousands of appeals handled by the Department's Administrative Law Division, now the Tax Tribunal. Those pro se taxpayers routinely raised additional issues and presented additional facts during the course of the appeal, usually at the hearing, that were not previously raised or presented in the notice of appeal. I can recall no case involving an appeal of a final assessment where the Department did not consider a newly raised issue or evidence, and if appropriate, adjust the taxpayer's liability accordingly. For example, if the Department had assessed a taxpayer based on a disallowed charitable contribution, and at the hearing the taxpayer for the first time presented adequate records showing that a previously unclaimed home mortgage interest deduction should be allowed, the Department would allow the deduction and adjust the taxpayer's liability accordingly. I must add that in some cases, the Department has also increased the amount of a final assessment based on an issue or fact raised or presented during the course of the case and after the notice of appeal was filed. But whether the assessment was decreased or increased, the point is that the Department would consider all evidence and issues relevant to the taxpayer's liability, and adjust the liability accordingly to reflect the correct tax due. That fits with the Department's mission statement to administer Alabama's revenue laws in an equitable manner. The Department's position in this case does not.

The holding in this case also does not shift the burden of proof from the taxpayer to the Department, as argued by the Department. Rather, as discussed, when the facts are not disputed and the case involves only a question of law concerning the correct interpretation of a statute, as in this case, the Tribunal has the authority and jurisdiction, if not the duty, to decide that legal issue.

Finally, any appeal of a Tax Tribunal final order to circuit court "shall be a trial de novo,. . . ." Code of Ala. 1975, §40-2B-1(m)(4). Consequently, as a practical matter, if the Tribunal affirmed the final assessment solely because the Taxpayer's representative failed to attend the hearing, the Taxpayer could appeal to circuit court and then raise the validity of Reg. 810-6-5-.13(8) in the trial de novo. Not resolving the issue while it is before the Tribunal would thus cause an unnecessary waste of time and expense for the Taxpayer and the Department, and also a waste of the circuit court's time and resources.

The Department's application for rehearing is denied. The December 10, 2014 Final Order is affirmed.

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

Entered January 27, 2015.

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BILL THOMPSON
Chief Tax Tribunal Judge

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