

JOHN JOHNSON, d/b/a
JOHNSON SPECIALTIES
1618 S. DECATUR STREET
MONTGOMERY, AL 36104-5603,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
ALABAMA TAX TRIBUNAL

DOCKET NO. S. 15-444

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed John Johnson (“Taxpayer”), d/b/a Johnson Specialties, for State sales tax for January 2011 through July 2014. The Taxpayer appealed to the Tax Tribunal pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on July 16, 2015. The Taxpayer attended the hearing. Assistant Counsel Bo Stone represented the Department.

The Taxpayer operates a graphic design business in Montgomery, Alabama. He sells printed tee shirts, banners, lawn signs, etc. in conducting the business.

The Department audited the Taxpayer for sales tax for the subject period. The Department examiner reviewed the sales and other records provided by the Taxpayer and determined that the records were insufficient. The examiner consequently computed the Taxpayer’s liability using his bank records.

The examiner first determined the Taxpayer’s total deposits during the audit period. She then subtracted the amounts she could verify from the Taxpayer’s records that were from a nontaxable source. For example, many of the Taxpayer’s customers provided the shirts and other items on which the Taxpayer imprinted a design, logo, etc. That activity constituted a nontaxable service. As indicated, the examiner deducted those amounts

from the Taxpayer's total deposits.

The examiner determined the total sales tax due by applying the four percent state rate to the Taxpayer's net taxable deposits. She then allowed a credit for sales tax reported and paid by the Taxpayer during the period to determine the additional tax due.

The Taxpayer primarily argues that many of his deposits into his bank account were personal in nature, and not from taxable sales by his business. He testified at the July 16 hearing that he sold various personal items during the audit period, and that he used the proceeds to keep his business open.

The Taxpayer provided an itemized list of the personal items that he sold on Craig's List and otherwise during the audit period. The items included at least two boats and two cars, various miscellaneous items, and a sign printing machine that he sold for \$15,000. When questioned about various of the items, the Taxpayer explained with specificity when and who he sold the items to.

The Taxpayer also contends that the initial audit period was from January 2011 through December 2013, and that it was unfair for the Department to extend the audit period through July 2014.

All retailers subject to Alabama sales tax are statutorily required to keep complete and 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).

The Taxpayer failed to keep adequate sales records from which the Department examiner could accurately compute or verify the Taxpayer's liability. The examiner was thus justified in using the Taxpayer's bank records to perform the audit. The examiner also removed the proceeds from the Taxpayer's nontaxable service activities, as best she could determine from the information provided by the Taxpayer.

The Taxpayer presumably did not present the examiner with a list of the personal items he sold to keep his business afloat. As discussed, however, he presented a list of the items at the July 16 hearing. He also gave detailed testimony concerning the items sold. Based on that evidence, the total proceeds from the sales of the personal items, a total of \$40,960, should be removed from taxable deposits.

Concerning the Department's inclusion of January through July 2014 in the audit, the Department is authorized to assess a taxpayer for any period or periods not barred by

the statute of limitations for assessing tax at Code of Ala. 1975, §40-2A-7(b)(2). The normal assessment period is three years. In this case, however, the Taxpayer signed a waiver of the statute of limitations that authorized the Department to assess him for January 2011 forward. The Department was thus entitled to assess the Taxpayer for the three years and seven months included in the final assessment in issue.

The Department is directed to recompute the tax due based on the above findings. An appropriate Final Order will then be entered.

This Opinion and Preliminary Order is not an appealable Order. The Final Order, when entered, may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2B-2(m).

Entered July 20, 2015.

BILL THOMPSON
Chief Tax Tribunal Judge

bt:dr

cc: Robert J. Stone, III, Esq.
John Johnson