

CRESCENT HOTELS & RESORTS LLC§
10306 EATON PLACE, STE. 430
FAIRFAX, VA 22030,

STATE OF ALABAMA
ALABAMA TAX TRIBUNAL

DOCKET NO. CITY 16-100

Taxpayer,

v.

CITY OF MOBILE.

FINAL ORDER

Crescent Hotels & Resorts, LLC (“Taxpayer”) petitioned the City of Mobile for a refund of various penalties the Taxpayer had paid relating to its January 2015 sales, food and beverage, lodgings, lease, liquor, and business license taxes. The City denied the petition. The Taxpayer timely appealed to the Tax Tribunal pursuant to Code of Ala. 1975, §§40-2A-7(c)(5)a. and 40-2B-2(g)(2)a. A hearing was conducted on June 27, 2016. Florence Kessler represented the City. Christy Fischer and Robin Lucas represented the Taxpayer.

The Taxpayer operated the Mobile Marriott Hotel in Mobile, Alabama during the period in issue. The Taxpayer’s tax filings for the period were handled by Shaner Solutions (“Shaner”).

Shaner prepared the Taxpayer’s January 2015 City of Mobile liquor, lease, lodgings, food and beverage, and sales tax returns on or before the Friday, February 20, 2015 due date. It also delivered the envelope addressed to the City of Mobile that contained those returns, along with envelopes addressed to other taxing jurisdictions, to the U.S. Postal Service on Friday, February 20, 2015. A check or checks for the total amount due the City accompanied the returns. For whatever reason, however, the envelope containing the City of Mobile returns and payments was not postmarked by the Postal Service until Monday,

February 23, 2015.

The City notified the Taxpayer on April 16, 2015 that the Taxpayer's January 2015 liquor, lease, lodgings, food and beverage, and sales tax returns and related payments had been remitted late, and that penalties were due. Shaner responded that it believed that the returns had been timely filed and the tax timely paid. The City subsequently provided the Taxpayer with a copy of the envelope addressed to the City that showed the February 23, 2015 postmark.

The City notified the Taxpayer again on July 27, 2015 that there was an outstanding amount due for the Taxpayer's 2015 business license, and also penalties concerning the food and beverage, lease, lodgings, and sales taxes due for January 2015.¹ The Taxpayer paid the penalties on July 27, 2015 because it was required to do so before the City would renew its annual business license. It also petitioned the City for a refund of the penalties on that date. As indicated, the City denied the petition, and the Taxpayer timely appealed to the Tax Tribunal.

Code of Ala. 1975, §11-51-200 allows municipalities to levy a municipal sales tax; provided, the tax must be "parallel to the state sales taxes as levied" in Title 40, Chapter 23, Code 1975. Code of Ala. 1975, §11-51-201 also provides that if a municipality enacts a local sales tax, the tax must be applied, administered, and "subject to all definitions, exceptions, exemptions, proceedings, requirements, provisions, rules and regulation . . . penalties, . . ." that apply concerning the State sales tax levied in Title 40, Chapter 23, Code 1975.

¹ It is not known why the City's July 27, 2015 notice did not include the Taxpayer's January 2015 liquor tax, as did the April 16, 2015 notice of delinquency.

Code of Ala. 1975, §40-2A-11 governs the levy of penalties for the late filing of returns and the late payment of all taxes administered by the State Revenue Department. Municipalities are required to conform to and follow the penalty provisions in §40-2A-11, see Attorney General Opinion 2007-113. Section 40-2A-11(h) allows for the waiver of any penalty assessed by the Revenue Department “upon a determination of reasonable cause.” That provision further provides that reasonable cause “shall include, but not be limited to, those instances in which the taxpayer has acted in good faith.”

Department Reg. 810-14-1-.33.01 expounds on §40-2A-11. Paragraph (3)(a)1. of the regulation gives examples of what constitutes “reasonable cause” for waiver of a penalty. Those examples include a nonrecurring, honest mistake.²

It is undisputed in this case that the Taxpayer had never previously failed to timely file returns and pay the City of Mobile taxes in issue by the due date. The Taxpayer’s failure to timely report and pay its January 2015 taxes was thus a nonrecurring event.

The evidence also establishes that the Taxpayer’s tax preparer, Shaner, acted in good faith because it timely prepared the January 2015 City of Mobile returns and attempted to deliver the returns, with payment of the reported amounts due, to the Postal Service for mailing by the February 20, 2015 due date. As indicated, however, for some unknown reason the envelope containing the returns and payment was not postmarked until the next business day, February 23, 2015.

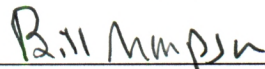
The circumstances clearly show that the Taxpayer’s failure to file its January 2015 City of Mobile returns and pay the reported tax due involved a nonrecurring, good faith

² See also, Rev. Proc. 97-003, which also states that for penalty waiver purposes, reasonable cause includes a nonrecurring, honest mistake.

mistake. The January 2015 penalties paid by the Taxpayer are accordingly waived for reasonable cause, and are due to be refunded; provided, the above penalty waivers apply only to the sales, rental, and lodgings tax penalties paid by the Taxpayer because the Tax Tribunal only has jurisdiction to hear municipal (or county) appeals of final assessments or denied refunds involving "sales, use, rental, or lodgings tax levied by a municipality or county." Code of Ala. 1975, §40-2B-2(g)(2)a. Consequently, while the food and beverage, liquor, and business license penalties should also be waived for cause for the reasons explained above, the Tribunal does not have jurisdiction to do so.³

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2B-2(m).

Entered July 7, 2016.



BILL THOMPSON
Chief Tax Tribunal Judge

bt:dr

cc: Florence A. Kessler, Esq.
Gwendolyn Hall, Director of Revenue
Christy Fischer

³ Shaner did not handle the Taxpayer's annual City of Mobile business license renewals. It is not in evidence why the Taxpayer failed to timely renew its 2015 City of Mobile business license. The City conceded at the June 27 hearing, however, that it was the first time that the Taxpayer had failed to timely do so.