

JOE MCEACHERN PHOTOGRAPHY, INC.	§	STATE OF ALABAMA
5559 MOUNTAIN PASS ROAD		ALABAMA TAX TRIBUNAL
SOUTHSIDE, AL 35907,	§	
		DOCKET NO. COUNTY 16-109
Taxpayer,	§	
v.	§	
CULLMAN COUNTY.	§	

FINAL ORDER

Cullman County assessed Joe McEachern Photography, Inc. (“Taxpayer”) for Cullman County sales tax for May 2013 through April 2016. The Taxpayer appealed to the Tax Tribunal pursuant to Code of Ala. 1975, §§40-2A-7(b)(5)(a) and 40-2B-2(g)(2)a. The Tribunal conducted a hearing in Huntsville, Alabama on January 11, 2017. County attorney Chad Floyd represented the County. The Taxpayer’s representative was notified of the hearing, but failed to attend.

A County examiner audited the Taxpayer for sales tax for the period in issue. The examiner determined from the Taxpayer’s records that the Taxpayer had sold pictures to students at various Cullman County schools during the period. The Taxpayer had included sales tax in the lump-sum prices it had charged the students.

The examiner also determined that the Taxpayer had paid a percentage of the gross sales proceeds to the schools as a sales commission. She also found that while the Taxpayer had collected sales tax on its total gross sales proceeds, it had computed and reported its taxable sales by deducting the commissions from its gross proceeds.

The examiner computed the Taxpayer’s taxable gross receipts for the period based on the Taxpayer’s total gross receipts, less the sales tax included in the lump-sum sales

amounts. She then allowed a credit for the sales tax reported and paid by the Taxpayer during the audit period to arrive at the additional tax due.

Counties in Alabama that levy a county sales and use tax are required to conform to and follow the State's sales and use tax laws at Code of Ala. 1975, §40-23-1 et seq., and related regulations. See generally, *The Pittsburg & Midway Coal Mining Co. v. Tuscaloosa County*, 994 So.2d 250 (Ala. 2008).

Alabama and local sales taxes are levied on a retailer's gross proceeds. See generally, Code of Ala. 1975, §40-23-2(1). "Gross proceeds" is defined as "[t]he value proceeding or accruing from the sale of tangible personal property, . . . without any deduction on account of the property sold, the cost of the materials used, labor or service cost, interest paid, any consumer excise taxes . . . , or any other expenses whatsoever," Code of Ala. 1975, §40-23-1(a)(6).

In this case, the Taxpayer's gross receipts were the full amounts charged by the Taxpayer for the photographs it sold to the students, less the sales taxes included in the lump-sum amounts. Because the commissions paid by the Taxpayer to the schools were expenses, §40-23-1(a)(6) specifically prohibited the Taxpayer from deducting those expenses in computing its gross proceeds subject to sales tax. The County examiner thus properly included the commissions, or more properly did not allow the Taxpayer to deduct the commissions, in computed the correct sales tax due.

Even if the Taxpayer could have deducted the commissions in computing its taxable gross proceeds, the Taxpayer would still owe the tax in issue because the Taxpayer charged and collected sales tax on the full amounts charged. Code of Ala. 1975, §40-23-26(d) provides that if a retailer collects sales tax from a customer, the retailer must remit

the full amount collected to the State (or local jurisdiction), even if some or all of the amount collected was not legally due.

The final assessment in issue is affirmed. Judgment is entered against the Taxpayer for Cullman County sales tax, penalty, and interest of \$8,115.99. Additional interest is also due from the date the final assessment was entered on July 16, 2016.

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

Entered January 19, 2017.

BILL THOMPSON
Chief Tax Tribunal Judge

bt:dr

cc: J. Chad Floyd, Esq.
Luther D. Abel, Esq.