

HIGHLINE IMPORTS, INC.
329 24TH STREET S
BIRMINGHAM, AL 35233-2407,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
ALABAMA TAX TRIBUNAL

DOCKET NO. S. 16-557

FINAL ORDER

This appeal involves final assessments of State sales tax entered by the Revenue Department against Highline Imports, Inc. ("Taxpayer") for September 2012 through August 2015 and September 2015 through October 2015. The Taxpayer appealed to the Tax Tribunal pursuant to §40-2A-7(b)(5)(1), Code of Ala. 1975. A hearing was conducted on October 18, 2016. Attorneys Sam McCord, Sr. and Sam McCord, Jr. represented the Taxpayer. Assistant Counsel Ralph Clements represented the Department.

The Taxpayer operated an automobile dealership in Birmingham, Alabama, during the periods in issue. The Department audited the Taxpayer for the subject periods and determined that the Taxpayer failed to collect sales tax on sales of automobiles in Alabama to customers that lived outside of Alabama. The Department requested that the Taxpayer provide it with properly executed drive-out certificates. The Taxpayer failed to do so. Consequently, the Department assessed the Taxpayer for State sales tax for September 2012 through August 2015 on April 18, 2016. The Taxpayer timely appealed the assessment to the Tribunal on May 12, 2016. The Department entered a second final assessment against the Taxpayer on May 13, 2016 for State sales tax for September 2015 through October 2015. The Taxpayer amended its appeal to include the May 13 assessment on June 1, 2016.

The sole issue on appeal in this case is the Taxpayer's failure to provide drive-out certificates to the Department for vehicles it sold to customers living outside of Alabama during the audit.

The sale of a vehicle in Alabama is exempt from sales tax if it is removed from Alabama within 72 hours and thereafter registered or titled outside of Alabama. §40-23-2(4). That statute further provides that "[in] order for the sale to be exempt from Alabama tax, the information relative to the exempt sale shall be documented on forms approved by the Revenue Department." Pursuant to the above statute, the Department promulgated Reg. 810-6-3-.42.03, which includes the form approved by the Department as a drive-out certificate. The regulation requires that the certificate must be completed and signed by the seller and buyer at the time of the sale, and that a certificate completed after the sale is invalid. The form requires that the purchaser attest that the vehicle will be removed from Alabama within 72 hours from the time of sale for first use and registration or titling outside of Alabama. The regulation also notifies automobile dealers that "failure to properly complete and maintain [the] certificate in the seller's files will result in the seller being held liable for the Alabama sales tax."

It is undisputed that the Taxpayer failed to maintain drive-out certificates on sales it made to out-of-state purchasers during the audit periods. The Taxpayer's former owner, its owner during the periods at issue, testified at the October 18 hearing that he was unaware that a drive-out certificate had to be completed for a vehicle sold to an out-of-state buyer for the vehicle to be exempt from Alabama sales tax. The former owner testified that a drive-out certificate was included in the package of documents its sales software provided, and that its purchasers signed the certificate as part of the closing process, but that the

certificates were not maintained by the Taxpayer. The Taxpayer provided no evidence that drive-out certificates were executed by the Taxpayer and its out-of-state purchasers during the audit periods at the time the sales were made.

Without a properly executed drive-out certificate completed at the time of sale, the statute is clear that the drive-out exemption does not apply, and that the seller must collect the State sales tax at the time of the sale. §40-23-2(4). Reg. 810-6-3-.42.03 is in accordance with the drive-out exemption statute. Consequently, because the Taxpayer failed to maintain properly executed drive-out certificates for vehicles it sold to out-of-state customers during the audit periods, the Taxpayer's sales to those customers were not exempt pursuant to the drive out exemption at §40-23-2(4).

The final assessments are affirmed. Judgment is entered against the Taxpayer for \$193,031.39 and \$10,289.28, respectively. Additional interest is also due from the date the final assessments were entered on April 18, 2016 and May 13, 2016, respectively.

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

Entered December 28, 2016.

CHRISTY O. EDWARDS
Associate Tax Tribunal Judge

cc: Ralph M. Clements, III, Esq.
Samuel R. McCord, Esq.