

DAVID M. KAHN  
3516 BRANCH MILL ROAD  
BIRMINGHAM, AL 35223,

Taxpayer,

v.

TUSCALOOSA COUNTY  
SALES & USE TAX DIVISION

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STATE OF ALABAMA  
ALABAMA TAX TRIBUNAL  
DOCKET NO. COUNTY 16-105

### **FINAL ORDER DISMISSING APPEAL**

This appeal involves a final assessment of 100 percent penalty entered by Tuscaloosa County against David M. Kahn, as a person responsible for payment of Tuscaloosa County consumer's use tax on behalf of Pizza 120, LLC, (the "Company") for the period January 2014 through August 2015. The Taxpayer appealed to the Tax Tribunal asserting that he could not be held responsible for the Company's unpaid consumer's use tax because the consumer's use tax is not a trust fund tax. For the reasons set forth below, the Taxpayer's appeal is hereby dismissed for lack of jurisdiction.

With respect to self-administered counties or municipalities that do not elect to divest the Tribunal of jurisdiction pursuant to Code of Ala. 1975, §40-2B-2(g), the Tribunal only has jurisdiction to hear and decide appeals of final assessments or denied refunds of sales, use, rental, or lodgings tax levied by or on behalf of a self-administered county or city. §40-2B-2(g)(2)a. The 100 percent penalty, levied in Code of Ala. 1975, §§40-29-72 and 40-29-73, is a penalty levied against any person responsible for paying an entity's trust fund taxes that willfully fails to do so. The penalty is not an enforcement or collection mechanism of the sales or use tax against the entity that incurred the liability or a penalty levied against the entity for the failure to pay the sales or use tax. It is a separate levy,

independent of the sales or use tax, on a person other than the entity responsible for the underlying tax. §§40-29-72 and 40-29-73. Consequently, the Tribunal does not have jurisdiction to hear appeals of 100 percent penalty assessments entered by self-administered counties or municipalities because it only has jurisdiction to hear appeals of assessments of sales, use, rental, or lodgings tax levied by or on behalf of self-administered jurisdictions. The circuit court is the proper forum for appeal of these assessments.

Because the Tribunal does not have jurisdiction to hear and decide the Taxpayer's appeal, the appeal is accordingly dismissed. This Final Order Dismissing Appeal may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2B-2(m).

Entered March 27, 2017.

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CHRISTY O. EDWARDS  
Associate Tax Tribunal Judge

cc: Timothy H. Nunnally, Esq.  
David M. Kahn (w/enc.)  
S. Kirk Keith