JOSEPH A. REARDEN 2908 Saint Peter Street Dothan, AL 36303-5320,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
Taxpayer,	§	DOCKET NO. S. 02-886
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER

The Revenue Department assessed Joseph Rearden ("Taxpayer") for use tax for April and May 1998. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on April 24, 2003. The Taxpayer was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Wade Hope represented the Department.

The Taxpayer failed to pay Alabama sales tax on a truck and trailer he purchased at retail from an Alabama motor vehicle dealer in 1998. The issue in this case is whether the Department correctly assessed the Taxpayer for Alabama use tax on the truck and trailer.

The Department discovered that the Taxpayer had failed to pay sales tax on a 1994 Freightliner truck and a 1994 utility trailer he had purchased from an Alabama motor vehicle dealer in April and May 1998, respectively. Rather, the Taxpayer had executed drive-out certificates indicating that he intended to first use and register the vehicles in another state.

The Department also determined that the Taxpayer was a long-haul trucker that resided in Alabama. It consequently assessed the Taxpayer for Alabama use tax on the vehicles pursuant to Code of Ala. 1975, §40-23-61. That section levies a use tax on the use, storage, or consumption of tangible personal property in Alabama. Section 40-23-62(1) allows an exemption from the Alabama use tax if Alabama sales tax was paid on the

property. Section 40-23-65 also allows a credit for sales or use tax paid on the property to another state. As indicated, however, the Taxpayer failed to pay sales tax on the vehicles to Alabama or any other state.

The validity of the drive-out certificates signed by the Taxpayer are not in issue. See generally, *Truck Central of Dothan, Inc. v. State of Alabama*, S. 02-166 (Admin. Law Div. O.P.O. 8/21/02). But in any case, the Taxpayer still owes Alabama use tax on the subsequent use and/or storage of the vehicles in Alabama. See generally, *McLendon Trucking Co., Inc. v. State of Alabama*, S. 01-206 (Admin. Law Div. 11/29/01).

The Taxpayer would not be liable for Alabama use tax on the vehicles if he never used or stored the vehicles in Alabama. However, the Taxpayer resides in Alabama, and it was reasonable for the Department to assume that the vehicles had been used or stored by the Taxpayer in Alabama. The final assessment in issue is *prima facie* correct, and the burden was on the Taxpayer to show that it was incorrect. Code of Ala. 1975, §40-2A-7(b)(5)c. Consequently, because the Taxpayer failed to prove that he did not use or store the vehicles in Alabama, or otherwise establish that the final assessment in issue is incorrect, the final assessment is affirmed.

Judgment is entered against the Taxpayer for $2,711.58. Additional interest is also due from the date of entry of the final assessment, November 21, 2002.

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

Entered May 1, 2003.