

GOLDEN DAYS LLC AND ITS SOLE MEMBER
MONJUR MORSHAD
3312 PEPPERELL PKWY
OPELIKA, AL 36801-6029,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
ALABAMA TAX TRIBUNAL

DOCKET NO. S. 16-1446

FINAL ORDER

The Revenue Department assessed Golden Days LLC and its sole member Monjur Morshad doing business as Goldenminimart (“Taxpayer”) for State sales tax for February 2014 through March 2016. The Taxpayer appealed to the Tax Tribunal pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on July 19, 2017. Assistant Counsel Hilary Parks represented the Department. The Taxpayer, through the representative of record, was notified of the hearing, but failed to attend.

The Taxpayer operated a convenience store in Opelika, Alabama, during the period in issue where it sold common convenience store items, including tobacco products. The Taxpayer did not sell gasoline.

The Department audited the Taxpayer for sales tax for the period in issue and requested records from which the Taxpayer’s sales tax liability could be computed/verified. It is undisputed that the Taxpayer provided incomplete bank statements, purchase/vendor invoices for one month in the audit period, and a list of the Taxpayer’s vendors. It did not submit any cash register z-tapes, credit card receipts or guest checks, or any other sales records.

The examiner determined that the Taxpayer's records were insufficient to allow the examiner to determine the Taxpayer's sales tax liability for the audit period. Specifically, the Taxpayer only provided purchase records for one month in the audit period. It did not provide any sales information.

Using purchase invoices provided by the Taxpayer's vendors, the examiner determined that Taxpayer's purchases exceeded the total taxable sales reported by the Taxpayer in the audit period. Consequently, the auditor performed a purchase mark-up audit to arrive at the Taxpayer's estimated gross receipts.

Simply stated, a retailer's sales tax liability is computed through a purchase mark-up audit by determining the retailer's wholesale purchases, and applying a reasonable retail mark-up percentage to determine the retailer's estimated retail sales. The sales tax due is computed on those estimated sales. A credit for sales tax previously reported and paid is then allowed to arrive at the additional sales tax due.

In this case, the examiner determined the Taxpayer's wholesale purchases during the period using the limited purchase invoices provided by the Taxpayer and purchase invoices obtained from the Taxpayer's vendors. She then applied the standard IRS Statistical Mark-Up of 49.93% applicable to food and beverage stores to arrive at the Taxpayer's estimated retail sales. She then applied the four percent State sales tax rate to determine the total tax due. She then allowed a credit for sales tax previously paid to determine the additional tax due. The negligence penalty was also applied because the Taxpayer failed to keep adequate records during the period.

The Taxpayer's owner claims in his notice of appeal that the Taxpayer "does not owe the amount assessed against him because he sold many of his times at a loss, and

therefore the estimated taxes assessed against him are excessive.” The Taxpayer argues that most of his sales are tobacco sales and that the Department over-estimated his cigarettes sales and the mark-ups applied to those sales because it failed to consider that the Taxpayer “routinely and habitually” sold cigarettes for less money than what he purchased them for at wholesale to attract customers to his store to make other purchases. Despite this assertion, the Taxpayer did not provide documentation to show how much he charged his customers for cigarettes throughout the audit period.

The Department responded that it used the best available information and employed a reasonable audit method to compute the Taxpayer’s remaining tax liability. The Department argues that the purchase mark-up audit method is a well-recognized, reasonable method used by the Department where a Taxpayer fails to keep adequate records whereby his tax liability can be ascertained, and asserts that the courts have repeatedly upheld this methodology in appeals based on similar facts. The Department is correct.

All retailers subject to Alabama sales tax are statutorily required to keep complete and accurate sales, purchase, and other records from which their correct sales tax liability can be computed. Code of Ala. 1975, §§40-2A-7(a)(1) and 40-23-9. A retailer’s duty to keep sales records is straightforward and simple. It is commonly understood that such records must be maintained to allow the Department to verify that the correct amount of sales tax has been reported and paid.

It is undisputed that the Taxpayer in this case failed to provide complete sales records. In such cases, the Department is authorized to compute a taxpayer’s actual tax liability using the most accurate and complete information obtainable. Code of Ala. 1975,

§40-2A-7(b)(1)a. The Department can also use any reasonable method to compute the liability, and the taxpayer, having failed in the duty to keep good records, cannot later complain that the records and/or method used by the Department is improper or does not reach a correct result. *Jones v. CIR*, 903 F.3d 1301 (10th Cir. 1990); *State v. Ludlum*, 384 So.2d 1089 (Ala. Civ. App.), cert. denied, 384 So.2d 1094 (Ala. 1980) (A taxpayer must keep records showing the business transacted, and if the taxpayer fails to keep such records, the taxpayer must suffer the penalty for noncompliance).

The purchase mark-up audit is a simple, oft-used Department method of determining a taxpayer's sales tax liability when the taxpayer fails to keep accurate sales records. See generally, *GHF, Inc. v. State of Alabama*, S. 09-1221 (Admin. Law Div. 8/10/10); *Thomas v. State of Alabama*, S. 10-217 (Admin. Law Div. O.P.O. 5/18/10); *Alsedeh v. State of Alabama*, S. 03-549 (Admin. Law Div. 11/3/04). Because the Taxpayer in this case failed to maintain adequate records from which its sales could be accurately computed or verified, the Department examiner correctly conducted a purchase mark-up audit to reasonably compute the Taxpayer's liability for the audit period. The tax due as computed by the audit is by its nature an estimate, but the examiner of necessity estimated the Taxpayer's liability because the Taxpayer failed to maintain adequate records.

The Taxpayer may be correct that the Department's mark-up of his cigarette sales is higher than it actually was during the audit period, but if the Taxpayer had maintained complete and accurate records, there would have been no need for the examiner to compute the estimated purchases and sales. Further, the Taxpayer's assertions cannot be relied on because he has failed to substantiate what he charged his customers for

cigarettes during the audit period. As discussed, because the Taxpayer failed to maintain good and accurate records, as required by Alabama law, it cannot now complain that the Department's computations must be rejected as inexact estimates.

The Department's audit was properly conducted using the best information available. The final assessment that is the subject of this appeal is accordingly affirmed. Judgment is entered against the Taxpayer for tax, penalties, and interest of \$68,458.11. Additional interest is also due from the date the final assessment was entered, November 29, 2016.

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

Entered August 7, 2017.

CHRISTY O. EDWARDS
Associate Tax Tribunal Judge

cc: Hilary Y. Parks, Esq.
Dan W. Taliaferro, Esq.