

BALI, INC. d/b/a MURF MART
1001 FREDERICK AVENUE
OPELIKA, AL 36801-6923,

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STATE OF ALABAMA
ALABAMA TAX TRIBUNAL
DOCKET NO. S. 17-570-JP

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

FINAL ORDER

This appeal involves final assessments of State sales tax, consumer's use tax, and the prepaid wireless 911 service charge entered by the Department of Revenue against the Taxpayer for January 2013 through November 2015. A hearing was scheduled for December 5, 2017, at 9:00 a.m. in Montgomery. Present at the hearing were J. Wade Hope, appearing on behalf of the Taxpayer as its attorney, and Mary Martin Mitchell, appearing on behalf of the Department as its attorney. Also present was the Department's examiner who conducted the audit, Ms. Tonya Kintz-Roberts. No corporate representative or fact witness appeared at the hearing on behalf of the Taxpayer. In fact, other than Mr. Hope, the Taxpayer made no appearance at the hearing.

During an audit, the Department concluded that the Taxpayer had failed to keep adequate records concerning the amounts of taxable sales that the Taxpayer had reported for the audit period. Therefore, the examiner used vendor invoices and payments by the Taxpayer to vendors to determine the Taxpayer's total purchases during the audit period. The examiner then applied a percentage mark-up to the purchase amounts to determine the amounts claimed by the Department as the Taxpayer's taxable sales, and the tax rate was applied to those amounts to determine the sales tax due for the audit period. The

Taxpayer was given credit for tax paid, and the Department assessed the Taxpayer for the difference, plus penalty and interest.

Concerning consumer's use tax, the Taxpayer provided the examiner with no records, so the examiner used records from a local wholesale club to determine the Taxpayer's purchases during the audit period. The examiner noted from the records that the Taxpayer made tax-free purchases of items that are not commonly sold in convenience stores. Thus, the Department assessed the Taxpayer for use tax on those items, plus penalty and interest.

Concerning prepaid wireless transactions, the Department likewise contacted a vendor of the Taxpayer to determine the number of phone cards sold during the audit period. A final assessment based on those calculations also was entered.

The law in Alabama is clear that a final assessment is presumed correct on appeal and that the burden of proof is on a taxpayer to show that the assessment is incorrect. Ala. Code § 40-2A-7(b)(5)c.3. Here, under these facts, the Taxpayer simply cannot overcome that presumption of correctness when it failed to send a corporate representative or a fact witness to the hearing. The Taxpayer's lack of testimony and evidence is even more critical where the Department's audit and resulting final assessments were premised upon the lack of sufficient Taxpayer records.

Therefore, the Tribunal has no alternative under the law but to affirm the final assessments. It is so ordered. Judgment is entered against the Taxpayer for State sales tax, penalty, and interest of \$46,700.93, consumer's use tax, penalty, and interest of \$2,592.28, and prepaid wireless service charge, penalty, and interest of \$347.98.

Additional interest is also due from the date the final assessments were entered on April 19, 2017.

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

Entered December 5, 2017.

JEFF PATTERSON
Chief Judge
Alabama Tax Tribunal

jp:dr

cc: Mary Martin Mitchell, Esq.
Allen Sheehan, Esq.
J. Wade Hope, Esq.