

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

v.

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DOCKET NO. S. 89-257

M. RICHARD DINGLER
d/b/a Great American Tent Co.
1882 Glenwood Road
Morris, AL 35611,

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Taxpayer.

FINAL ORDER

The Revenue Department assessed Richard Dingler, d/b/a Great American Tent Company (Taxpayer) for the period January 1, 1982 through April 30, 1989. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on April 8, 1991. The Taxpayer represented himself. Assistant counsel Dan Schmaeling represented the Department. This Final Order is based on the evidence presented by both parties.

FINDINGS OF FACT

The Taxpayer rented tents during the period January 1982 through April 1989. The Taxpayer rented some of the tents over-the-counter with no services involved. However, most of the time the Taxpayer also set-up and dismantled the tent for the customer.

The Taxpayer failed to pay rental tax or file returns with the Department during the subject period. The Department audited the Taxpayer using the Taxpayer's records, which consisted of legal-size envelopes and file folders containing the customer's name, the location of the job, the items and the amount charged. In all cases the Taxpayer charged a flat price for the tents, without a breakout for any set-up costs, if applicable. The Department examiner included the entire amount received by the Taxpayer as gross proceeds subject to the lease tax.

The Taxpayer concedes that he charged a lump sum price which included any set-up or service charge, but argues that the set-up charges included as part of the rental should not be subject to lease tax. The Taxpayer testified that in all cases the set-up charges were equal to the rental price.

CONCLUSIONS OF LAW

The Alabama lease tax is measured by gross proceeds derived from the leasing of tangible personal property. "Gross proceeds" is defined as the value accruing from the lease, without deduction for services, the cost of the property, or other related overhead costs incurred by the lessor. See, Code of Ala. 1975, §40-12-220(4); Ex parte Thompson Tractor Co., Inc., 432 So.2d 497.

In this case, the Taxpayer received a single amount for the tent rentals. Any set-up fees included as part of the rental fee were for services performed incidental to and derived from the leasing of the tents. Consequently, the fees were reimbursement (and profit) for labor and other overhead costs incurred by the Taxpayer and must be included as gross proceeds subject to the lease tax.

In any case, even if the set-up charges were not taxable, the Taxpayer failed to keep adequate records from which the Department could determine what portion of his proceeds should be exempt. A taxpayer must keep accurate records and when no records are provided from which the Department can distinguish taxable and nontaxable proceeds, the entire amount must be included as taxable. See, State v. Ludlam, 384 So.2d 1089; State v. Mack, 411 So.2d 799.

The above considered, the assessment in issue is correct and should be final by the Department, with applicable interest.

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Entered May 31, 1991.

BILL THOMPSON
Chief Administrative Law Judge