

ALABAMA TAX TRIBUNAL

WILLIE G. LEE, §
Taxpayer, § DOCKET NO. S. 19-319-JP
v. §
STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

In February 2019, the Alabama Department of Revenue mailed letters to 1,000 taxpayers notifying them that the Revenue Department had closed their sales tax accounts because of a lack of taxable activity within the previous 12 months. The Taxpayer in this appeal was one of those taxpayers whose account was closed.

In his Notice of Appeal to the Tax Tribunal, the Taxpayer stated that “I realize I have not sold any vehicles within a year. I am in the process of starting back.” In the Revenue Department’s Answer, it stated that the Taxpayer had not reported any taxable sales since January 2017 and that the Taxpayer’s business location looked abandoned. As legal authority for the Revenue Department’s action, the Revenue Department cited Ala. Code §§ 40-23-6(a) and 40-23-2(1) and also cited Ala. Admin. Code r. 810-6-4-.19.

Section 40-23-6(a) requires a person who is in the business of selling tangible personal property at retail to obtain a license for such activity from the Revenue Department. The section does not mention the closing of a sales tax account. Section 40-23-2(1) levies a state sales tax upon the selling at retail of tangible personal property. It makes no mention of the closing of a sales tax account. Rule 810-6-4-.19 lists the information that must be reported on a sales tax return by a retailer, and it requires the

reporting of other information on an annual basis. The rule makes no mention of the closing of a sales tax account.

In a Preliminary Order, the Tax Tribunal directed the Revenue Department to inform the Tax Tribunal of the specific authority that allows the Revenue Department to close a taxpayer's sales tax account. Also, the Revenue Department was directed to inform the Tax Tribunal whether the Taxpayer here had filed any "zero" returns since January 2017, or had the Taxpayer simply not filed returns at all.

The Revenue Department responded that the Taxpayer had filed "zero" returns since March 2017, but that the most recent return showing tax due was filed in February 2017. Concerning specific legal authority, the Revenue Department cited § 40-2A-8(a), which "provides that 'the department shall notify a taxpayer in writing of any act or proposed act or refusal to act concerning the denial or revocation of a license, permit, or certificate of title. . .'" The Revenue Department also cited § 40-2B-2(a), which states that a taxpayer may contest before the Tax Tribunal "any determination that cancels, revokes, suspends, or denies an application for a license, permit, or registration." Finally, the Revenue Department cited Ala. Admin. Code r. 810-14-1-.22. The Revenue Department concluded by stating that "[t]here would be no need for these 2 statutes, and rule, if the Department did not have the authority to close a Taxpayer's sales tax account, in this instance, for inactivity."

First, § 40-2A-8(a) does require the Revenue Department to notify a taxpayer in writing of the act or proposed act of revoking a license, permit, or certificate of title. However, that section does not expressly provide to the Revenue Department the authority to close a sales tax account. It merely mandates that written notice be provided as to

certain acts or proposed acts and that taxpayers have the right to appeal those acts to the Tax Tribunal. In other words, § 40-2A-8(a) is not the source of the Revenue Department's authority to close a sales tax account.

To illustrate the point, § 40-12-396(a), which concerns motor vehicle dealer licenses, expressly states that the Commissioner of the Revenue Department "may, subject to the appeal provisions allowed in Chapter 2A of this Title 40, suspend or revoke any license issued for the willful and intentional failure of the licensee to comply with the provisions of this article. . ." And, as quoted, § 396 expressly references the appeal provisions in § 40-2A-8(a). Also, the Revenue Department is authorized by § 40-12-416 to cancel or revoke the license of an automotive dismantler and parts recycler, "subject to the notice and appeal provisions set out in Chapter 2A of this Title 40."

Again, as shown, § 40-2A-8(a) is not the source of authority for the Revenue Department to close sales tax accounts. It merely addresses notice and appeal requirements. For the same reasons, § 40-2B-2(a) is not a source of authority for the Revenue Department's action here, as it too is a mere acknowledgment of the right of taxpayers to appeal to the Tax Tribunal.

The final authority cited by the Revenue Department is Rule 810-14-1-.22, but the Revenue Department's reliance is again misplaced. The rule is divided into two parts. Paragraph (1) concerns the denial of licenses, account numbers, permits, and certificates. But that paragraph addresses the initial application process, which is not at issue here. In its heading, Paragraph (2) purports to address the revocation of licenses, account numbers, etc., but the actual provisions in that paragraph state only that, "[w]henver any license, account number, permit, or certificate is revoked by the Department, the holder

shall be notified in writing of the revocation.” The rule does not provide any criteria that taxpayers must meet to keep their licenses or any conditions that would result in the revocation of their licenses. Instead, the rule addresses the methods of notification; *e.g.*, by first-class or certified mail, and it lists the information that must be included in the notice.

The rule concludes by stating that the revocation is not final until the holder consents or the time for appealing to the Tax Tribunal has expired. Thus, Rule 810-14-1-.22 is not a source of authority for the Revenue Department to close sales tax accounts.

As discussed, the Revenue Department has cited no existing authority for its action of closing the Taxpayer’s account. It seems obvious that the Revenue Department could adopt a rule that authorizes it to close sales tax accounts under certain prescribed conditions. Specifically, § 40-2A-7(a)(5) authorizes the Revenue Department to “make reasonable regulations [pursuant to the Alabama Administrative Procedure Act] concerning any matter administered by the department.” Here, however, the Revenue Department has not done so as to the conditions under which it may close a taxpayer’s sales tax account.

Therefore, the Revenue Department’s decision to close the Taxpayer’s sales tax account is reversed and the Revenue Department is directed to reopen the account.

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

Entered April 29, 2019.

/s/ Jeff Patterson _____

JEFF PATTERSON

Chief Judge

Alabama Tax Tribunal

jp:dr

cc: Willie G. Lee (w/enc.)
Margaret Johnson McNeill, Esq.