

ALABAMA TAX TRIBUNAL

JAI BAJRANG, INC.,	§	
Taxpayer,	§	DOCKET NO. S. 18-991-LP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

FINAL ORDER

This appeal involves final assessments of State sales tax and local tax for November 2011 through October 2017.¹ A hearing was conducted on October 3, 2019. Donald Richbourg represented the Taxpayer. Assistant Counsel Craig Banks represented the Alabama Department of Revenue.

The Taxpayer operated a convenience store within the city limits of Geneva, Alabama, during the period at issue. The store primarily sold the following: gasoline, oil, tobacco products, groceries, and beer.

The Revenue Department’s examiner audited the store to determine compliance with State sales tax laws during the subject periods. The examiner requested the store’s sales tax-related records, including the following: all books and records used to prepare sales tax returns; sales invoices and sale journals; cash register z-tapes; purchase invoices; income tax returns; and cancelled checks and bank statements. The Taxpayer provided some z-tapes, cash register recaps, and purchase invoices.

¹ The audit was extended back to 2011 for the fraud penalty, but that penalty was dropped so the final assessment in issue is only calculated from November 1, 2014, through October 31, 2017.

The examiner determined that the z-tapes matched the reported sales, but they did not match the purchase records.

Because the purchases exceeded reported sales, the examiner determined the Taxpayer underreported sales. Thus, the examiner estimated the Taxpayer's liability using a purchase mark-up audit. The Taxpayer provided the examiner with vendor invoices detailing the Taxpayer's purchases of items for resale. The examiner next applied the IRS mark-up of 1.355 percent, calculated as an average of the IRS standard mark-ups for food stores and gas stations, to arrive at the store's estimated retail sales for years 2015 and 2016. Because the Department did not have complete records for 2014 and 2017, it used a percentage of error method to determine final assessments for 2014 and 2017. The Department calculated the percentage of error on the reported sales in 2015 and 2016 and then applied that percentage to the reported sales for the months at issue in 2014 and 2017.

The Taxpayer was billed for the additional tax due and interest. Billing progressed to entry of State and local final assessments on September 4, 2018, in the amounts of \$38,156.11 and \$52,435.66, respectively.

The Taxpayer timely appealed. The Taxpayer argued that the purchases exceeded the reported sales because the Taxpayer purchased more inventory than he would sell in a given period so that he could take advantage of good deals. The Taxpayer's owner did not attend the hearing, and thus there was no testimony regarding the excessive purchases. Additionally, no evidence was submitted to support the Taxpayer's position. The only explanation provided was that the Taxpayer's owner put his own funds into the business. However, there was no evidence submitted during the hearing or previously during the Petition for Review of Preliminary Assessment to substantiate this position. The examiner testified that the Taxpayer's owner told him during the audit

that more records were coming in the mail. However, no additional records were ever provided.

The Department is authorized to compute a taxpayer's correct liability using the most accurate and complete information obtainable. Ala. Code § 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) (holding that 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. However, out of necessity, the examiner was required to estimate the Taxpayer's liability because the Taxpayer failed to maintain adequate records.

The Revenue Department conducted a purchase mark-up audit and also used a percentage of error method to determine the Taxpayer's liability. If a Department audit is reasonable under the circumstances, it will be affirmed. *Pelican Pub & Raw Bar, LLC v. State of Alabama*, S. 00-286

(Admin. Law Div. 12/15/00); *Joey C. Moore v. State of Alabama*, S. 99-126 (Admin. Law Div. 8/19/99); *Red Brahma Club, Inc. v. State of Alabama*, S. 92-171 (Admin. Law Div. 4/7/95). A Department audit will be affirmed if based on the best information available, and the taxpayer fails to present evidence that the audit is incorrect. *Kroger Company v. State of Alabama*, S. 00-440 (Admin. Law Div. 4/11/01). The final assessment in issue is *prima facie* correct, and the burden was on the Taxpayer to prove that the assessment was incorrect. Code of Ala. 1975, §40-2A-7(b)(5)c. The Taxpayer has failed to carry that burden.

The Department's audit was properly conducted using the best information available. The final assessments that are the subject of this appeal are accordingly affirmed. Judgment is entered against the Taxpayer for State and local tax and interest of \$38,156.11 and \$52,435.66, respectively. Additional interest is also due from the date the final assessments were entered, September 4, 2018.

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

Entered October 17, 2019.

/s/ Leslie H. Pitman
LESLIE H. PITMAN
Associate Tax Tribunal Judge

lhp:dr

cc: Donald C. Richbourg, Jr.
Craig A. Banks, Esq.