

ALABAMA TAX TRIBUNAL

MARVIN B. LOFTON
d/b/a M & L GROCERY,

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Taxpayer,

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§

DOCKET NO. S. 19-629-LP

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER

This appeal involves a final assessment of of State sales tax for January 1, 2013, through September 30, 2018. A hearing was conducted on November 21, 2019. The Taxpayer attended the hearing. Assistant Counsel David Folmar represented the Alabama Department of Revenue.

The final assessment was entered because the Taxpayer failed to report the total proceeds of sales. The Revenue Department determined that the Taxpayer underreported sales because purchases exceeded sales reported. The Department consequently entered a final assessment against the Taxpayer for the above-mentioned period.

The Taxpayer claims that he (1) only made an average of 10% on the items that were sold in the store, (2) never made 35% profit on items sold in the store, (3) believes inventory in the store was stolen and he does not know how much was stolen, and (4) has accounts left on the books that have not had taxes paid because he never received payment for the purchases.

It is the Revenue Department’s position that the Taxpayer has not met the burden of proving the final assessment is incorrect. See Ala. Code § 40-2A-7(b)(5). As stated earlier, the Taxpayer failed to report the total gross proceeds of sales. The Revenue Department determined that after comparing the Taxpayer’s July 2018 through November 2018 beer, alcohol, and tobacco purchases

to the gross sales reported on the July 2018 sales return that purchases exceeded sales. A total taxable purchase mark-up audit was conducted to determine the total taxable sales.

The Revenue Department acquired purchase records from the Taxpayer's vendors for the audit. It also examined the Taxpayer's bank statements. The Revenue Department also compared the monthly cash and credit card deposits to the gross monthly amount reported to the State and determined that sales were underreported because the bank statement cash and credit card deposits were greater than the gross sales reported to the State.

It is undisputed that the Taxpayer in this case failed to provide complete sales records. In such cases, the Revenue Department is authorized to compute a taxpayer's actual tax 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.2d 1301 (10th Cir. 1990); *Alsedeh v. State of Alabama*, S. 03-549 (Admin. Law Div. 11/3/04).

The purchase mark-up audit is a simple, oft-used Revenue 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, supra*. Because the Taxpayer in this case failed to maintain adequate records from which his sales could be accurately computed or verified for income tax purposes, the Department examiner correctly conducted a purchase mark-up audit to reasonably compute the Taxpayer's liability. 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 final assessment is affirmed. Judgment is entered against the Taxpayer for State sales tax, penalties, and interest of \$32,211.37. Additional interest is also due from the date the final assessment was entered on April 25, 2019.

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

Entered March 13, 2020.

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

lhp:dr

cc: Marvin B. Lofton
Warren W. Young, Esq.