

ALABAMA TAX TRIBUNAL

ABDUL ALMOJADID,	§	
Taxpayer,	§	DOCKET NO. S. 18-183-JP
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

ORDER OVERRULING TAXPAYER'S APPLICATION FOR REHEARING

On October 13, 2020, the Alabama Tax Tribunal issued an Opinion and Final Order upholding a final assessment of state sales tax that had been entered against the Taxpayer by the Alabama Department of Revenue. The assessment included tax, interest, and the fraud penalty. The Taxpayer has timely applied for rehearing of the Opinion and Final Order.

First, the Taxpayer argues that the Revenue Department's estimates of the Taxpayer's sales should have been reduced for theft and spoilage, despite the Taxpayer presenting no amount and no proof of such theft or spoilage. Instead, the Taxpayer cites rulings from the Revenue Department's former Administrative Law Division, which either acknowledged that the Revenue Department's examiner had allowed a certain percentage for theft and spoilage or ordered such an allowance. However, the Tax Tribunal is a separate state agency from the Alabama Department of Revenue and is not bound by the rulings of the Revenue Department's former Administrative Law Division. See Ala. Code § 40-2B-2(l)(7). See also *Complete Payment Recovery Svcs, Inc., et. al. v. State*, Alabama Tax Tribunal, Docket Nos. BIT. 17-583-LP, BIT. 17-751-LP, BIT. 17-752-LP (Final Order June 12, 2020). Further, both Revenue Department witnesses testified that the Internal

Revenue Service mark-up percentage makes an allowance for theft and spoilage. The Taxpayer did not present evidence or argument to refute that testimony. Additionally, the Revenue Department's sales-tax hearings officer acknowledged that the Revenue Department has allowed Taxpayers a reduction in estimated sales for theft and spoilage when those claims have been accompanied by police or fire reports. Here, the Taxpayer provided no such reports.

Second, the Taxpayer argues that the Tax Tribunal's opinion ignored evidence regarding occasional purchases that were extrapolated by the Revenue Department over the entire audit period. However, as stated in the opinion on Page 7, the Revenue Department's examiner testified that she, with the assistance of the Taxpayer's representative, revised the purchase estimates prior to assessment to address occasional and seasonal sales. The Taxpayer simply did not produce evidence to document any further changes.

Third, the Taxpayer argues that the Tax Tribunal's opinion incorrectly upheld the fraud penalty solely because the Taxpayer "appears to have understated his sales..." The Taxpayer continues by making arguments that were considered previously by the Tax Tribunal in issuing its opinion. However, the opinion did not rely solely on the fact that the Taxpayer underreported his sales. As explained more thoroughly in the Opinion and Final Order, the Taxpayer, who had prior experience in the convenience-store business, kept no sales records for any period of the audit. Instead, he supplied his bookkeeper with some wholesale purchase invoices for the purpose of reporting sales tax, despite the fact that the tax is based on the retail selling price (a fact the

Taxpayer was aware of by regularly collecting sales tax on those retail prices). Trial evidence showed that the Taxpayer underreported to the Revenue Department his own wholesale purchases during the audit period by \$8 million, which does not even include his retail sales (which, by law, should have been reported) or the 35 percent mark-up. The Revenue Department introduced sufficient evidence to prove fraud.

Fourth, the Taxpayer asks the Tax Tribunal to relieve some of the interest that has accrued on the final assessment since the pendency of his appeal. The Tax Tribunal has no authority to take such action and thus cannot do so.

Therefore, the Taxpayer's Application for Rehearing is overruled. The Opinion and Final Order remains in effect.

This Order Overruling Taxpayer's Application for Rehearing may be appealed to circuit court within 30 days from the date of this order, pursuant to Ala. Code § 40-2B-2(m).

Entered November 10, 2020.

/s/ Jeff Patterson

JEFF PATTERSON
Chief Judge
Alabama Tax Tribunal

jp:cm

cc: Blake A. Madison, Esq.
Hilary Y. Parks, Esq. (w/enc.)