

ALABAMA TAX TRIBUNAL

SOUTHERN AUTO AUCTION, INC.,	§	
Taxpayer,	§	DOCKET NO. S. 19-1032-JP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

OPINION AND FINAL ORDER

This appeal involves a challenge to a final assessment of state sales tax for the periods of April 2015 through March 2018. A trial was held on October 26, 2022. William Nance represented the Taxpayer. Hilary Parks represented the Revenue Department, and Sherrie Johnson, a Revenue Department examiner, testified.

Ms. Johnson stated that the final assessment consisted of tax on buyer fees, documentary fees, and “other” fees charged by the Taxpayer to purchasers of vehicles at automobile auctions. According to Ms. Johnson, she did not include the following in the taxable measure: title application fees if those fees were identified as such; any amounts relating to sales to non-Alabama residents; and any amounts relating to sales to automobile resellers. Ms. Johnson testified that she calculated taxable fees received by the Taxpayer over an 18-month period based on the Taxpayer’s records and then projected a monthly average based on those 18 months over the subsequent 18-month period.

Section 40-23-2(4), Ala. Code 1975, levies “[u]pon every ... corporation engaged or continuing within this state in the business of selling at retail any automotive

vehicle ... an amount equal to two percent of the gross proceeds of sale of the automotive vehicle” (emphasis added). “Gross Proceeds of Sales” is defined by § 40-23-1(a)(6) to include “[t]he value proceeding or accruing from the sale of tangible personal property, and including the proceeds from the sale of any property handled on consignment by the taxpayer, including merchandise of any kind and character without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid, any consumer excise taxes that may be included within the sales price of the property sold, or any other expenses whatsoever, and without any deductions on account of losses” Therefore, the Revenue Department correctly included the fees at issue in this case in the Taxpayer’s taxable measure. And the Taxpayer produced no evidence to show that the Revenue Department’s calculation of taxable sales was incorrect. “On appeal to ... the Alabama Tax Tribunal, the final assessment shall be prima facie correct, and the burden of proof shall be on the taxpayer to prove the assessment is incorrect.” Ala. Code 1975, §40-2A-7(b)(5)c.3. Because the Taxpayer in this case did not meet its burden, the final assessment is upheld.

Judgment is entered in favor of the Revenue Department and against the Taxpayer in the total amount of \$4,274.56, plus additional interest that continues to accrue from the date of entry of the final assessment until the liability is paid in full.

This Final Order may be appealed to circuit court within 30 days, pursuant to Ala. Code 1975 § 40-2B-2(m).

Entered February 27, 2023.

/s/ Jeff Patterson

JEFF PATTERSON

Chief Judge

Alabama Tax Tribunal

jp:ac

cc: William D. Nance
Hilary Parks, Esq.