

TUSCALOOSA PUBS, INC.  
c/o Samuel R. McCord, Esq.  
600 Title Building  
300 North Twenty-First Street  
Birmingham, AL 35203,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 03-425

### **FINAL ORDER**

The Revenue Department assessed Tuscaloosa Pubs, Inc. ("Taxpayer") for State sales tax for June 1999 through March 2002. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on October 22, 2003. Attorney Sam McCord and accountant Bill Mitchell represented the Taxpayer. Assistant Counsel David Avery represented the Department.

### **ISSUE**

The Taxpayer operated a bar in Tuscaloosa, Alabama during the audit period. The issue in this case is whether the Taxpayer owes Alabama sales tax on the full amount it charged its customers for liquor, wine, and beer at the bar, or whether the Taxpayer should be allowed to back out the sales tax it claims was included in the lump-sum amounts charged to its customers.

### **FACTS**

The Taxpayer charged a lump-sum amount for liquor, wine, and beer during the audit period, i.e. \$3.00 for a drink, \$2.00 for a beer, etc. In computing its gross receipts subject to sales tax, the Taxpayer backed out the sales tax it claims was included in the lump-sum price. For example, if the Taxpayer charged \$2.00 for a beer, the Taxpayer

backed out the applicable State and local sales tax, and then reported and paid tax on gross receipts of approximately \$1.81.

The Department audited the Taxpayer and assessed it for additional tax on the difference between the amount the Taxpayer had reported as gross receipts, \$1.81 in the above example, and the full price paid by the customer, \$2.00 in the above example. The Department contends that the Taxpayer owes tax on the full sales price because it did not have a sign or provide the customers with a receipt showing that sales tax was included in the lump-sum price.

The Taxpayer's accountant testified at the October 22 hearing that the Taxpayer has been backing out sales tax from its gross sales price and paying sales tax on the net since at least 1998. He also testified that numerous other bars and restaurants in the Tuscaloosa area were doing the same thing.

### **ANALYSIS**

Alabama sales tax is levied on the gross proceeds derived from the sale of tangible personal property. Code of Ala. 1975, §40-23-2(1). "Gross proceeds of sale" is defined as the "value proceeding or accruing from the sale of tangible personal property." Code of Ala. 1975, §40-23-1(a)(6). All retailers subject to sales tax are required to add sales tax to the sale price and collect it from the purchaser. Further, it is illegal "to absorb . . . the amount (of sales tax) required to be added to the sales price and collected from the purchaser, . . ." Code of Ala. 1975, §40-23-26(b).

The taxable gross proceeds received by the Taxpayer were the full amounts paid by its customers. The Taxpayer argues that sales tax was included in the lump-sum amounts, and thus should be backed out in computing taxable gross proceeds. As indicated,

however, it is illegal for the Taxpayer or any other retailer to absorb the sales tax in the sale price charged to a customer.

The Department concedes that a retailer can charge a lump-sum price for a product which includes sales tax, and then back out the sales tax in computing taxable gross receipts. To do so, however, the retailer must have an on-premises sign or provide the customer with a receipt showing that sales tax was included in the lump-sum price. Otherwise, the retailer would be illegally absorbing the sales tax in the price.

The Department cites Dept. Reg. 810-6-1-.125 in support of its position. That regulation provides that if a taxpayer operates a place of amusement that is subject to the gross receipts sales tax levied at Code of Ala. 1975, §40-23-2(2), the sales tax on the price of admission must be stated as a separate item, either on a sign at the business or on the admission tickets used by the business. Otherwise, the gross receipts tax would be on the full admission amount. The requirement that tax must be separately stated on a sign or a ticket is based on §40-23-26(b), which, as discussed, prohibits absorbing sales tax in the lump-sum price.

The Taxpayer argues that Reg. 810-6-1-.125 applies only to admissions to places of amusement. The Taxpayer is technically correct. However, the statute itself, §40-23-26(b), prohibits the Taxpayer from charging a lump-sum amount without identifying a part of the amount as sales tax. By failing to have a sign or customer receipt showing that tax was included in the sale price, the Taxpayer was illegally absorbing sales tax in the price. In such cases, sales tax is due on the full lump-sum sales price.

The final assessment is affirmed. Judgment is entered against the Taxpayer for State sales tax and interest of \$5,153.92. Additional interest is also due from the date of entry of the final assessment, May 29, 2003.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered November 24, 2003.