

WINSTON K. WEEKLEY
Phoenix Properties
903 St. Mary's Drive
Waycross, GA 31501,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§
§
§
§
§
§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 03-463

FINAL ORDER

The Revenue Department assessed Winston K. Weekley ("Taxpayer"), d/b/a Phoenix Properties, for State sales tax for September 2001 through August 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 January 6, 2004. The Taxpayer attended the hearing. Assistant Counsel Wade Hope represented the Department.

The issue in this case is whether the Taxpayer should be held liable for sales tax on retail sales made at a convenience store in Phenix City, Alabama during the subject period.

The Taxpayer is retired from the U.S. military and is currently employed as a minister in Waycross, Georgia. He resided and worked as a minister outside of Athens, Georgia during the period in issue.

The Taxpayer and Al White together leased a mobile home park in Phenix City, Alabama during the audit period. The Taxpayer explained at the January 6 hearing that he first met White in 2000 or 2001 in conjunction with another business deal the two were involved in. White asked the Taxpayer if he would be interested in leasing a mobile home park in Phenix City, Alabama with a group of investors. The Taxpayer agreed. However, as it eventually worked out, the Taxpayer was the only investor and was required to put up

\$200,000 as security for the mobile home park lease.

The Taxpayer and White did not have a formal partnership agreement. Rather, the Taxpayer testified that they agreed that White would operate and manage the mobile home park, and that he and White would share any profits from the park. The Taxpayer contends that there was never any mention of him being involved in a convenience store on the property. He knew that a store was being operated on the premises only because he visited the park every four to six weeks during the period in issue. He testified, however, that he thought White was operating the store as a separate enterprise.

In early September 2001, the Department received an application for a sales tax license in the Taxpayer's name, d/b/a Phoenix Properties. Phoenix Properties was the name that the Taxpayer and White had informally given for their mobile home park venture. The address on the application for Phoenix Properties was 220 U.S. Highway 431 South, Phenix City, Alabama, which is the address of the mobile home park. The application was signed by Al White, as general manager.

The Department returned the application to the above address because the signature of the owner had not been provided. The Department received the application back on October 1, 2001 with the signature of "Winston Keith Weekley, Owner." The Department subsequently issued a sales tax license in the Taxpayer's name based on the above application.

The Department never received any sales tax returns on the account. Consequently, a Department agent called on the location in late 2001 to determine why returns had not been filed. The agent talked with White, who identified himself as the manager and the Taxpayer as owner. White provided the agent with a telephone number

in Atlanta, which he claimed was the Taxpayer's number. The agent called the number, and the person that answered the telephone identified himself as the Taxpayer. That individual also confirmed that White was authorized to act as his (Weekley's) representative for sales tax purposes.

The Department's agent subsequently contacted White on several occasions concerning the delinquent sales tax. White consistently put the agent off or avoided him. The agent eventually prepared sales tax coupons for the account and took them to the store location. He was told when he arrived at the business that White had left the area. The agent talked to the mobile home park owner at that time. The owner told the agent that he had seen the store's books, and that the business' monthly sales tax liability was approximately \$550. The agent computed the store's liability using that estimate and forwarded his calculations to the Department in Montgomery.

The Department subsequently entered a preliminary assessment against the Taxpayer for the estimated tax due, plus penalties and interest. The Taxpayer testified that until he received the preliminary assessment, he was not aware that his name was on the sales tax account for the business. He immediately contacted White, who told him that the matter had been handled. The matter had not been handled, however, and the Department eventually entered the final assessment in issue against the Taxpayer on June 3, 2003. The Taxpayer appealed.

A final assessment on appeal is *prima facie* correct, and the burden is on the taxpayer to establish that the assessment is incorrect. Code of Ala. 1975, §40-2A-7(b)(5)c.

The Department assessed the Taxpayer in this case because the sales tax account was in his name. The evidence establishes, however, that the Taxpayer had nothing to do

with the convenience store in issue. He testified that he never signed the sales tax application, and was not otherwise aware that the application had been submitted to the Department in his name. He offered into evidence his Georgia drivers license. His signature on the license is clearly different from the signature on the sales tax application. He also testified that he has never had an Atlanta telephone number, and that he never talked to the Department's collection agent.

Circumstantial evidence also supports the Taxpayer's testimony. The sales tax application, as first submitted to the Department, was signed only by Al White, as general manager. It is thus reasonable to assume that White submitted the application, not the Taxpayer. The application was returned to the Phenix City location because it was not signed by the owner. The application was later returned to the Department showing the signature of the Taxpayer, as owner. As indicated, the Taxpayer denies signing the application, and the signature on the license application is clearly different from the Taxpayer's signature on his drivers license. In addition, it is unlikely that the Taxpayer was even in Phenix City when his name was signed on the application because the Taxpayer only visited the Phenix City location from his home in Athens, Georgia every four to six weeks.

The Department certainly acted reasonably when it assessed the Taxpayer because the sales tax license was in his name, and the Department had no reason to believe that the Taxpayer was not the owner of the business. However, the Taxpayer's testimony at the January 6 hearing was believable and is accepted as the truth.¹ Consequently, because

¹ The Taxpayer also testified that he lost the \$200,000 he put up as security on the mobile home park lease, and also has numerous bad checks given to him by White. The Taxpayer

the Taxpayer's signature on the sales tax application was a forgery, and because the Taxpayer was otherwise not involved in the convenience store in question, the final assessment against the Taxpayer is voided. Judgment is entered accordingly.

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

Entered January 9, 2004.

believes that White is currently in the Biloxi, Mississippi area.