

STANFORD L. SMITH
D/B/A STAN'S AMOCO
6601 1st Avenue North
Birmingham, AL 35206-5012,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 03-538

FINAL ORDER

The Revenue Department assessed State sales tax against Stanford L. Smith ("Taxpayer"), d/b/a Stan's Amoco, for December 1995 through April 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 March 2, 2004. The Taxpayer notified the Administrative Law Division shortly before the hearing that he would not attend. The hearing was conducted as scheduled. Assistant Counsel Wade Hope represented the Department.

The Taxpayer operated two service stations in Birmingham, Alabama during the period in question. He also operated a convenience store at one of the locations, and a repair shop at the other.

The Department audited the Taxpayer for State sales tax in mid-2002. The Taxpayer conceded to the Department examiner that he had closed his State sales tax account with the Department in November 1995. However, he continued to purchase inventory tax-free using his canceled sales tax number. He also continued to collect sales tax when he sold the inventory to his customers, but failed to file sales tax returns and remit the tax due to the Department.

The Department examiner computed the Taxpayer's liability for December 1995 through April 2002 using the partial sales and purchase invoices and cash register z-tapes provided by the Taxpayer. The examiner used the Taxpayer's records to compute his liability for the months for which complete records were provided. The average liability for those months was then projected over the months for which complete records were not provided.

After the audit, the Department entered the final assessment in issue for the tax due, plus applicable interest. It also assessed the Taxpayer for the 50 percent fraud penalty levied at Code of Ala. 1975, §40-2A-11(d).

The Taxpayer does not dispute the tax due as assessed by the Department. Rather, he claims that the penalties and interest are excessive.

If a taxpayer fails to file a return, the Department is authorized to compute the taxpayer's liability using the best information obtainable. Code of Ala. 1975, §40-2A-7(b)(1)a. The Department thus properly assessed the Taxpayer based on his own records. As indicated, the Taxpayer does not dispute the tax due as computed by the Department, but would like the penalties and interest reduced.

First, interest is required by statute and cannot be reduced or waived. Code of Ala. 1975, §40-1-44.

Concerning the fraud penalty, the Taxpayer obtained a sales tax number in 1981. He filed monthly sales tax returns and remitted the tax due to the Department until November 1995. He canceled his tax number at that time. He continued, however, to use the tax number to purchase inventory tax-free. He also continued to charge and collect sales tax from his customers. The Taxpayer's egregious actions clearly constitute a willful

and intentional attempt to evade paying his sales tax. The 50 percent fraud penalty was thus correctly assessed. See, *Morrell v. Comm.*, T.C. Memo 1971-99 (“The addition to tax for fraud may be imposed when the taxpayer has willfully attempted to evade tax by a willful failure to file returns, as well as when (the taxpayer) has filed intentionally false returns.”).

The final assessment is affirmed. Judgment is entered against the Taxpayer for State sales tax, penalty, and interest of \$271,537.91. Additional interest is also due from the date of entry of the final assessment, July 3, 2003.

If the Taxpayer has evidence disputing the above findings, he may apply for a rehearing within 15 days of this Final Order. Otherwise, this Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered March 9, 2004.