

CALHOUN COUNTY PIZZA, INC.
DOMINO'S PIZZA
11259 Highway 63 South
Lucedale, MS 39452-6617,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 03-986

FINAL ORDER

The Revenue Department assessed Calhoun County Pizza, Inc., d/b/a Domino's Pizza, for State sales tax for September 2001 – January 2002 and September – November 2002, and local sales tax for September 2001 – February 2002 and September – November 2002. A hearing was conducted on February 11, 2004. Harold Grant ("Taxpayer"), the owner of the business, attended the hearing. Assistant Counsel Keith Maddox represented the Department.

The Taxpayer does not dispute that his business owes the tax and interest assessed by the Department. He argues, however, that the penalties should be waived for reasonable cause. He testified at the February 11 hearing concerning the unforeseen events that he claims prevented his business from paying its sales tax beginning in mid-2001.

The matter was submitted to the Department's Taxpayer Advocate after the February 11 hearing for a determination as to whether reasonable cause exists to waive the penalties. The Taxpayer Advocate has responded that the penalties cannot be waived because the Taxpayer has "additional delinquent returns and payments due."

The Taxpayer has owned and operated a Domino's Pizza franchise in Calhoun County, Alabama since 1990. He testified at the February 11 hearing that his business had always timely filed its sales tax returns and paid the tax due until mid-2001. He claims his business continued to timely file returns during the months in issue, but that unforeseen events that occurred beginning in mid-2001 prevented him from paying the reported tax due. Those events included the closing of Fort McClellan, which greatly reduced the business's sales; road construction that forced the relocation of an outlet; and a lawsuit that the Taxpayer was forced to settle for \$15,000. The business's dire financial situation also caused it to incur substantial bank overdraft charges in 2001 and 2002. The Taxpayer testified that he has worked with a Revenue Department collection agent over the past two years in an effort to resolve the problem, and that he has timely reported and paid all sales tax due since December 2002.

As indicated, the Taxpayer claims his business had always timely filed returns and paid the tax due before mid-2001, and that it continued to timely file returns during the months in issue. However, the Department's records indicate otherwise. Attached to this Order is a computer-generated delinquent list relating to the Taxpayer's business. It indicates that the Department mailed the Taxpayer eleven delinquent notices before 2001, which is not in itself egregious.¹ However, beginning in May 2001, the Taxpayer's business repeatedly failed to timely file its sales tax returns on numerous occasions. For example, the May and June 2001 returns were not filed until October 2, 2001, and the October,

¹ The "Period" column shows the month and year of the delinquent return. The "DLC" column to the right shows when the delinquency was cleared.

November, and December 2001 and January 2002 returns were not filed until September 15, 2003, to cite only a few.

The Taxpayer's owner and his wife appear to be sincere, honest individuals. I personally sympathize with them concerning the unfortunate events that have occurred since mid-2001. However, sales tax is a trust-fund tax that a retailer is required to collect from the buyer and remit to the Department. The Taxpayer in this case collected sales tax from his customers, but instead of remitting the tax to the Department, he used the money to pay other creditors. As indicated, the business also failed to timely file its sales tax returns for the months in issue.² If I was the creditor in this case, I would waive the penalties to give the Taxpayer a better chance to recover. But the State is the creditor, and using sales tax collected from its customers to pay other creditors in lieu of the Department, even because of financial difficulties, does not constitute reasonable cause. Under the circumstances, the penalties in issue cannot be waived.

The final assessments are affirmed. Judgment is entered against the Taxpayer for State sales tax, penalty, and interest of \$38,587.73, and local tax, penalty, and interest of

² The Taxpayer's sales tax returns are for four week periods instead of the usual monthly reporting periods. As discussed, the Taxpayer contends that his Mississippi accountants have always timely filed his returns, and that any delinquency shown on the Department's records is due to the Department not timely processing and recording the four week returns.

It is plausible that the Department may on occasion fail to promptly process a return. However, the attached computer printout shows that the Taxpayer was delinquent in a number of months, and that many returns were filed several months late. That indicates that the problem is with the Taxpayer's accounting firm, not the Department. All taxpayers subject to Alabama sales tax are now required to file electronic returns, which provides a confirmation page or receipt. Consequently, it is now easy to verify when a return was electronically filed.

\$26,368.44. Additional interest is also due from the date of entry of the final assessments, October 7, 2003.

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

Entered March 25, 2004.