

CARLTON L. CLIFTON
707 Geneva Street
Opelika, AL 36801-5808,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 04-299

FINAL ORDER

The Revenue Department assessed Carlton L. Clifton (“Taxpayer”), d/b/a Whispering Oaks Bed & Breakfast, for State sales tax for July 2000 through April 2003, and State and Lee County lodgings tax for May 2000 through April 2003. 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 September 21, 2004. The Taxpayer attended the hearing. Assistant Counsel Wade Hope represented the Department.

The Taxpayer operates two restaurants and a catering service. He also rents facilities for private parties, family reunions, etc. The Taxpayer has locations in Opelika and Tuskegee.

During the period in issue, the Taxpayer sold meals tax-free to various churches and other nonprofit and charitable groups. The Department assessed the Taxpayer for sales tax on those sales because neither the churches nor the nonprofit and charitable groups were exempt from sales tax. The Department also assessed the Taxpayer for lodgings tax on the gross receipts derived from the rental of his facilities.

The Taxpayer argues that the meals in question were exempt from sales tax because they were made to either the City of Tuskegee, the City of Opelika, or the State or U.S. Government. He explained that Opelika and Tuskegee officials routinely asked him to

provide meals to transients, homeless people, and others in need of temporary assistance. However, the Cities never issued purchase orders to the Taxpayer, and the meals were paid for by various churches and other charitable and nonprofit groups in the area.

The Taxpayer also contends that some of the meals in issue were sold to the Army Reserve or the National Guard. He explained that the Reserve or Guard would call him and request that he provide meals for Reserve or Guard members. He would provide the meals and, according to the Taxpayer, the Reserve or Guard would then pay for the meals by giving him a government credit card number over the telephone. Again, there is no documentation that the meals were ordered or paid for by the Reserve or Guard.

Based on the Taxpayer's testimony, it appears that the City of Tuskegee and the City of Opelika may have arranged and coordinated the Taxpayer's providing of the meals to the various needy individuals. However, to qualify as an exempt sale, the Taxpayer was required to obtain a purchase order from the exempt City, and the City must have actually paid for the meals with City funds. Dept. Reg. 810-6-3-.69.02.

There are no purchase orders or other tangible evidence that the City of Tuskegee or the City of Opelika ordered the meals from the Taxpayer. The meals were also paid for by various churches and charities in the area, not the Cities. While churches and charities are worthwhile organizations that perform many good deeds, there is no blanket exemption from sales tax for all churches and charities. The Alabama Legislature has specifically exempted many charities and other organizations from tax.¹ However, none of those exempt organizations purchased the meals in issue.

Even if the sales had been to the Cities, the Taxpayer failed to properly document

the sales. He failed to provide purchase orders from the Cities concerning the sales, and, as indicated, there is no tangible evidence that the Cities paid for the meals that were included in the audit.² The burden is on a taxpayer to document all exempt sales, and if a taxpayer fails to properly maintain adequate records, the taxpayer must suffer the consequences and pay sales tax on those sales not accurately recorded as exempt. *State v. Ludlum*, 384 So.2d 1089 (Ala. Civ. App.) *cert. denied*, 384 So.2d 1094 (Ala. 1980).

The above rationale also applies to the sales the Taxpayer claims he made to the Army Reserve and the National Guard. There is no tangible evidence that the Reserve or the Guard ordered the meals, or that they paid for the meals. Without such records, no exemption can be allowed.

The Taxpayer also rented out his facilities for various social functions. He failed to collect lodgings tax on the rental receipts because he thought that lodgings tax did not apply if he did not provide overnight lodging. However, the transient occupancy lodgings tax levied at Code of Ala. 1975, §40-26-1, et seq., applies to the rental of any room, lodgings, or other facility. An overnight stay is not required. Consequently, the gross receipts derived from the Taxpayer's rental of its facilities were subject to lodgings tax.

A penalty may be waived for reasonable cause. Code of Ala. 1975, §40-2A-11(h). Under the circumstances, the penalties included in the final assessments are waived.

The final assessments, less the penalties, are affirmed. Judgment is entered

¹ For a complete list of exempt organizations, see Dept. Reg. 810-6-3-.07.05.

² The Taxpayer testified that the Cities did pay him by check on occasion. However, those sales were not included as taxable in the audit.

against the Taxpayer for State sales tax and interest of \$6,045.36; State lodgings tax and interest of \$1,137.52; and Lee County lodgings tax and interest of \$569.22. Additional interest is also due from the date of entry of the final assessments, February 25, 2004.

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

Entered October 27, 2004.

BILL THOMPSON
Chief Administrative Law Judge