

S & M EQUIPMENT CO., INC.
835 SHAW RD.
P.O. BOX 818
LEIGHTON, AL 35646-0818,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 05-1090

FINAL ORDER

The Revenue Department assessed S & M Equipment Company, Inc. ("Taxpayer") for contractors gross receipts tax for August through December 2004. 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 December 8, 2005. CPA Charles Watkins and Mike Walker, the Taxpayer's manager, attended the hearing. Assistant Counsel David Avery represented the Department.

The issue in this case is whether late penalties assessed against the Taxpayer for the period in issue should be waived for reasonable cause.

The Taxpayer is a contractor in North Alabama that is subject to the contractors gross receipts tax levied at Code of Ala. 1975, §40-23-50. The Taxpayer registered with the Department and began paying its Alabama taxes by electronic funds transfer in 1999. The Taxpayer banked at Suntrust Bank at the time. Consequently, the Taxpayer's Suntrust account and routing numbers were in the Department's database.

The Taxpayer changed to Compass Bank in September 2003. It also began filing and paying its taxes manually at that time because it did not want to go through the trouble of changing the information in the Department's database.

The Department began requiring the Taxpayer and similarly situated taxpayers to file electronically over the internet in mid-2004. The Taxpayer accordingly applied to do so, and provided the Department with its Compass Bank account number.

The Taxpayer's manager testified at the December 8 hearing that when he thereafter attempted to file online, the information in the Department's database showed the old Suntrust account and routing numbers. He stated that he backed out that incorrect information and entered the correct information. He also stated that he got a confirmation number from the Department, which he took to mean that the Department had received the payment information. However, when he attempted to file for subsequent months, the incorrect Suntrust account and routing numbers were still in the Department's database. Consequently, he had to manually correct the information each time. He received confirmation from the Department concerning each filing, which he again took to mean that the Department had received the correct information.

The manager claims that he was not aware that the Department had not been paid until the Department contacted the Taxpayer in December 2004. The manager immediately telephoned and discussed the matter with a Department employee, James Mayberry. According to the manager, Mayberry told him that there was a glitch in the system, and that the manager should send a check for the amount due, less the discount. The manager did so. The manager discussed the matter again with Mayberry, and also with Mayberry's supervisor. He finally contacted Don Graham, a special projects manager with the Department, in January 2005. Graham apparently resolved the problem because the Taxpayer has not had a problem paying electronically since that time.

The manager's testimony is supported by the Department's records, which indicate that the Taxpayer first filed electronically in October 2004. It filed its June, July, and August returns at that time. Curiously, the June and July filings had the correct Compass Bank account and routing information, but the August filing showed the old Suntrust information. The Taxpayer's subsequent electronic filings for September through December 2004 also showed the old Suntrust data.

Because the Department did not timely received the payments from the Taxpayer, it disallowed the discounts claimed by the Taxpayer, which totaled \$1,200. It also assessed the Taxpayer for delinquent penalties of \$24,706.97, and interest of \$2,047.90. The Taxpayer appealed.

The Taxpayer's representative conceded at the December 8 hearing that the Taxpayer had on occasion been delinquent in filing and paying its Alabama taxes. He also stated, however, that all of the taxes have been paid, plus all applicable penalties and interest.

A penalty may be waived for reasonable cause. Code of Ala. 1975, §40-2A-11(h). The Taxpayer's failure to timely pay its contractors gross receipts tax for the months in issue was not a one-time mistake because, as indicated, the Taxpayer had been delinquent in prior periods. However, the penalties should still be waived because the Taxpayer attempted to pay, but was unable to do so because of a glitch in the Department's electronic filing system. The Taxpayer's old Suntrust data was embedded in the Department's system. The Taxpayer's manager attempted to correct the data, but the system apparently would not accept the new data until Don Graham handled the problem in early 2005.

The final assessment, as reduced, is affirmed. Judgment is entered against the Taxpayer for interest of \$2,047.90.

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

Entered February 14, 2006.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: J. Wade Hope, Esq.
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Joe Cowen