

MIXON FAMILY BASKETS
THE GRAPEVINE
3924 S. CHAPEL HILL ROAD SW
DECATUR, AL 35603-3340,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 05-219

**FINAL ORDER ON TAXPAYERS'
APPLICATION FOR REHEARING**

This case involves a final assessment of sales tax entered against the above Taxpayer for January 1998 through October 2003. The Taxpayer sold baskets and other miscellaneous items at their place of business in Decatur, Alabama, and also at flea markets and other temporary locations in five other Southeastern states during the subject period.

The Taxpayer filed Alabama sales tax returns on which it reported and paid the sales tax due on its sales in Alabama. It contends that the remainder of its sales were outside of Alabama, and thus not subject to Alabama tax. It also argues that it paid the applicable sales tax in the states in which the sales were made.

The Department audited the Taxpayer for sales tax for the subject period. The Taxpayer failed to provide the Department examiner with sufficient records from which its sales tax liability could be determined. The examiner consequently assessed the Taxpayer based on the gross receipts reported by the Taxpayer on its income tax returns for the subject years. Because the Taxpayer failed and/or refused to provide any records verifying that some of its sales were outside of Alabama, the examiner

included all of the gross receipts as taxable. She then allowed a credit for tax previously paid to arrive at the additional tax due. The Taxpayer appealed.

A hearing was conducted in May 2005. The Taxpayer subsequently provided the Department examiner with additional records/information, which included the Taxpayer's federal tax returns, 2003 bank deposits, some sales invoices and credit card receipts, and a handwritten notebook in which the Taxpayer had recorded its sales at flea markets and various other venues outside of Alabama.

The examiner re-audited the Taxpayer using the above information. She again used the Taxpayer's gross income as reported for income tax purposes as a starting point. The gross income reported by the Taxpayer during the period totaled \$1,509,042.73. The Taxpayer claimed that non-taxable sales outside of Alabama accounted for \$1,409,906.34 of the total income. The examiner attempted to verify the out-of-state sales using the Taxpayer's credit card receipts, invoices, and the handwritten notebook discussed above. Using those documents, the examiner verified that the Taxpayer's out-of-state sales totaled \$1,125,891.67.

The examiner treated the difference between the exempt sales claimed (\$1,409,906.34) and the exempt sales documented (\$1,125,891.67), or \$284,014.67, as taxable sales in Alabama. She also included as taxable sales the difference between the Taxpayer's gross income as reported (\$1,509,042.73) and the sales the Taxpayer claimed were exempt (\$1,409,906.34), or \$99,136.39.

The Taxpayer's taxable sales as computed above totaled \$383,151.06. The examiner assumed that the Taxpayer had collected 8 percent sales tax on those sales. She consequently backed out the 8 percent tax to arrive at net taxable sales of

\$354,769.50. Tax on that amount is \$14,190.78. The examiner then allowed a credit for tax previously paid, which resulted in additional tax due of \$9,206.22, plus penalties and interest of \$2,361.72 and \$2,675.90, respectively, for a total liability of \$14,243.84.¹ A Final Order was entered for that amount on December 14, 2005. The Taxpayer timely applied for a rehearing.

A rehearing was conducted on October 10, 2006. Assistant Counsel Wade Hope again represented the Department. CPA William Peppers again represented the Taxpayer.

The Taxpayer's representative did not produce any new records or other evidence at the rehearing. Rather, he argued that the Taxpayer had correctly reported all of its taxable Alabama sales, and that all other sales were non-taxable out-of-state sales.

The Taxpayer's CPA did a good job arguing the Taxpayer's case. However, the examiner's re-audit of the Taxpayer was reasonable and well-done based on the information available. She allowed the Taxpayer credit for all out-of-state sales that were documented, even those otherwise undocumented sales in the Taxpayer's unverified handwritten notebook. Under the circumstances, the tax due of \$9,206.22 as determined by the examiner in her re-audit is affirmed.

The Department's initial audit report suggested that the Taxpayer was being assessed the 5 percent negligence penalty because it failed to maintain adequate records. See, Audit Report dated December 17, 2003. However, the penalty assessed by the Department was more than 5 percent of the tax due. I agree that the negligence

¹ The examiner's detailed calculations are set out in Dept. Ex. 1 submitted at the October 10 hearing.

penalty levied at Code of Ala. 1975, §40-2A-11(c) is appropriate because the Taxpayer failed to keep adequate records, as required by Alabama law and Department regulation. Consequently, a 5 percent penalty of the adjusted amount due, or \$460.31, is affirmed. Additional interest is also due on the above amounts until the date of payment.

The December 14, 2005 Final Order is voided. Judgment is entered against the Taxpayer for tax of \$9,206.16, penalty of \$460.31, and applicable interest.

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

Entered January 9, 2007.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: J. Wade Hope, Esq.
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Joe Cowen