

SAMS GROUP INC.
1904 HIGHWAY 31 S
BIRMINGHAM, AL 35244-1107,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer, §

DOCKET NO. S. 05-440

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed Sams Group, Inc. ("Taxpayer") for State sales tax for November 2000 through December 2003, and January through April 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 September 8, 2006. Bill Dunn represented the Taxpayer. Assistant Counsel Wade Hope represented the Department.

In May 2004, the Taxpayer purchased the assets and inventory of an on-going business, The Smoke Shop, in Hoover, Alabama. The purchase agreement stated that the prior owners, David and Debbie Graham, would remain responsible for all back taxes owed by the business.

The Department was auditing The Smoke Shop for State sales tax when the above sale occurred. The Department subsequently entered a final assessment against The Smoke Shop on July 1, 2004 for the tax, penalties, and interest due for November 2000 through December 2003. The Smoke Shop appealed to the Administrative Law Division, which affirmed the tax due as assessed of \$56,242.08. See, *The Smoke Shop v. State of Alabama*, S. 04-620 (Admin. Law Div. 6/1/05). That amount has not been paid.

The Department subsequently learned that the Taxpayer had purchased the assets and inventory of The Smoke Shop. It consequently assessed the Taxpayer as a successor in business for the tax of \$56,242.08 owed by The Smoke Shop for November 2000 through December 2003, plus penalties and interest. It also assessed the Taxpayer for estimated tax of \$2,000 owed by The Smoke Shop for January through April 2004, plus penalties and interest.

The Department conceded at the September 8 hearing that the penalties included in the final assessments were improperly assessed, and should be waived. It otherwise argued, however, that the Taxpayer is liable as a successor in business for the unpaid sales tax owed by The Smoke Shop for the periods in issue.

The Taxpayer contends that it should not be held liable for the unpaid taxes in issue because its purchase agreement with the Grahams indicated that the Grahams would remain liable for all back taxes. The Taxpayer's owner also indicated that he sold the business to another individual in November 2004, and thus is no longer involved in the business.

Alabama law requires the purchaser of a retail business to withhold purchase money from the seller sufficient to pay the delinquent sales taxes owed by the seller. The purchaser is personally liable for the unpaid tax if he fails to do so. "If the purchaser of a business or stock of goods shall fail to withhold purchase money as above provided, . . . he shall be personally liable for the taxes accrued and unpaid on account of the operation of the business by the former owner." Code of Ala. 1975, §40-23-25.

In this case, the Taxpayer purchased the assets and inventory of The Smoke Shop, and was thus a successor in business pursuant to §40-23-25. Consequently, the Taxpayer is liable under §40-23-25 for the unpaid taxes owed by The Smoke Shop for the periods in issue.

The Taxpayer is not relieved of liability because it may not have paid the Grahams sufficient money to pay the taxes due in full. “Further, the direct payment of purchase money from the purchaser to the seller is not necessary for the successor to be liable for any delinquent sales taxes owed by its predecessor. . . .” *The Frozen Yogurt Shop v. State of Alabama*, S. 89-202 (Admin. Law Div. 4/18/90) at 3, citing *Bank of Commerce v. Woods*, 585 S.W.2d 577 (1979); *A. Copeland Enterprises, Inc. v. Comm. of Revenue*, 703 S.W.2d 624 (1986); see also, *Knudsen Dairy Products Co. v. State, Bd. of Equalization*, 12 Cal.App.3d 47, 90 Cal. Rept. 533 (1970).

The Taxpayer also is not relieved of liability because his agreement with the Grahams stated that the Grahams would remain liable for the business’s unpaid taxes. A taxpayer cannot contract away a statutory obligation to pay taxes to the government. The Taxpayer may have a cause of action against the Grahams pursuant to their agreement, but it is still liable to the Department as a successor in business for the unpaid taxes in issue.

The Taxpayer sold the business in November 2004. However, the Taxpayer’s liability as a successor attached pursuant to §40-23-25 when it purchased the business from the Grahams in May 2004. The Taxpayer could not absolve itself of that liability by reselling the business. The person or entity that purchased the business from the

Taxpayer may also be liable as a successor, just as The Smoke Shop is still liable for the unpaid taxes, but the Taxpayer likewise remains liable until the taxes are paid in full.

The final assessments, less the penalties, are affirmed. Judgment is entered against the Taxpayer for \$66,422.65. Additional interest is also due from the date the final assessments were entered, March 2, 2005.

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

Entered September 13, 2006.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

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