

MOGHIS GHOURI
SPEEDY SHOP
2676 HIGHWAY 77
ATTALLA, AL 35954-7129,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 06-526

FINAL ORDER

The Revenue Department assessed Moghis Ghauri ("Taxpayer"), d/b/a Speedy Shop, for State sales tax for October 2002 through September 2005. 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 7, 2006. The Taxpayer's representative was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Margaret McNeill represented the Department.

The Taxpayer operates a gas station/convenience store in Attalla, Alabama. The Department audited the Taxpayer for sales tax for October 2002 through September 2005. The Taxpayer provided the Department examiner with some cash register tapes and purchase invoices. The cash register tape totals appeared to verify the Taxpayer's sales as reported on his monthly returns.

The examiner also determined, however, that the Taxpayer's monthly purchases were generally equal to or greater than his reported monthly sales. The examiner consequently requested purchase records from the Taxpayer's major vendors. In reviewing those records, he discovered that the Taxpayer had failed to provide many of the larger purchase invoices from the various vendors. The vendor invoices also showed that on

average, the Taxpayer had purchased more goods each month than he had reported as sales. The examiner thus determined that the Taxpayer's returns were not correct, and computed the Taxpayer's liability using a purchase mark-up audit.

The examiner computed the Taxpayer's purchases using the vendor invoices. He initially applied the standard 26.79 percent IRS mark-up for gas station/convenience stores. He later lowered the mark-up to 20 percent to take into account cigarette buy-downs. The assessment in issue is based on that reduced mark-up.

All taxpayers subject to sales tax are required to keep complete and accurate records from which the Department can accurately determine the taxpayer's correct liability. Code of Ala. 1975, §§40-2A-7(a)(1) and 40-23-9; *State v. Mack*, 411 So.2d 799 (Ala. Civ. App. 1982). If a taxpayer fails to keep adequate records, the Department can use any reasonable method to compute the taxpayer's liability. The taxpayer cannot later complain that the liability so computed by the Department is inexact. *Jones v. C.I.R.*, 903 F.3d 1301 (10th Cir. 1990).

The Department's use of a purchase mark-up audit is a commonly used and accepted method of computing a taxpayer's liability in the absence of adequate records. See generally, *Alsedeh v. State of Alabama*, S. 03-549 (Admin. Law Div. 11/3/04); *Arnold v. State of Alabama*, S. 03-1098 (Admin. Law Div. 7/27/04); *Moseley's One Stop, Inc. v. State of Alabama*, S. 03-316 (Admin. Law Div. 7/28/03); *Pelican Pub & Raw Bar, LLC v. State of Alabama*, S. 00-286 (Admin. Law Div. 12/15/00); *Joey C. Moore v. State of Alabama*, S. 99-126 (Admin. Law Div. 8/19/99); *Robert Earl Lee v. State of Alabama*, S. 98-179 (Admin. Law Div. 6/28/99); *Red Brahma Club, Inc. v. State of Alabama*, S. 92-171 (Admin. Law Div. 4/7/95); and *Wrangler Lounge v. State of Alabama*, S. 85-171 (Admin. Law Div. 7/16/86).

In this case, the Department examiner determined that the Taxpayer had not correctly reported his monthly sales because his monthly purchases, without mark-up, exceeded his monthly sales as reported. The examiner thus correctly computed the Taxpayer's liability using the purchase mark-up audit. The Taxpayer has failed to present evidence showing that the 20 percent mark-up is incorrect, or otherwise disputing the correctness of the examiner's audit.

The *prima facie* correct final assessment is affirmed. Judgment is entered against the Taxpayer for State sales tax and interest of \$17,027.01. Additional interest is also due from the date the final assessment was entered, May 16, 2006.

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

Entered December 13, 2007.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Margaret Johnson McNeill, Esq.
Luther D. Abel, Esq.
Myra Houser
Joe Cowen