

CRESTMONT LLC
D/B/A QUALITY HOTEL & SUITES
317 MAGAZINE STREET
NEW ORLEANS, LA 70130-7400,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 06-871

**FINAL ORDER ON TAXPAYER'S
APPLICATION FOR REHEARING**

The Revenue Department assessed Crestmont, LLC, d/b/a Quality Hotel & Suites, ("Taxpayer") for City of Homewood lodgings tax for January through August 2005. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. The facts and procedural history are set out below.

The City of Homewood increased its lodgings tax from 3 percent to 6 percent by Ordinance 2226, effective January 1, 2005. The Revenue Department, which administers Homewood's lodgings and some other taxes, notified all affected parties of the rate increase in December 2004. The tax was challenged in Jefferson County Circuit Court, and the Court ruled on January 13, 2005 that the tax increase was invalid.

The Revenue Department subsequently notified the Taxpayer and all other affected parties on January 25, 2005 to continue collecting and paying the Homewood lodgings tax at the 3 percent rate. The Taxpayer thereafter paid the 3 percent Homewood lodgings tax to the Department during the months in issue.

The Alabama Supreme Court ruled in September 2005 that the Homewood ordinance increasing the tax to 6 percent was valid, effective January 1, 2005. *Bharat, LLC v. City of Homewood*, 931 So.2d 697 (Ala. 2005). The Revenue Department subsequently

entered a final assessment of City of Homewood lodgings tax against the Taxpayer, and others, for January through August 2005. The Taxpayer timely appealed.

The Administrative Law Division conducted a hearing in the case on January 24, 2007. The case was subsequently held in abeyance by agreement of the parties pending the outcome of a declaratory judgment action filed in Jefferson County Circuit Court by a similarly situated taxpayer, Residence Inn by Marriott, Inc., concerning the disputed lodgings tax increase. See, *Residence Inn by Marriott, Inc. v. City of Homewood and Alabama Department of Revenue*, Civ. No. CV 06-7363.

The Circuit Court entered an Order on Motion for Summary Judgment in the *Residence Inn by Marriott* case on January 15, 2009. Residence Inn, and most all other similarly situated taxpayers, settled with the City of Homewood after the January 15 Order was entered. The Circuit Court subsequently entered an Order voiding its January 15, 2009 Order.

A Second Preliminary Order was entered in this case on October 27, 2009 indicating that “[t]he Department has settled the other cases that were on appeal to the Administrative Law Division. . .” concerning the disputed 3 percent tax increase. The Preliminary Order also directed the Taxpayer to notify the Administrative Law Division of its position by November 20, 2009. The Taxpayer failed to respond, and a Final Order Dismissing Appeal was entered on December 28, 2009.

The Taxpayer timely applied for a rehearing. A hearing was conducted on April 15, 2010. The Department indicated at the hearing that it had discussed the case with the City of Homewood, and that Homewood was willing to discuss settlement with the Taxpayer.

The case was again held in abeyance pending a possible settlement.

The Department notified the Administrative Law Division in December 2010 that Homewood had made a settlement offer that the Taxpayer refused to accept. The Taxpayer was thereafter directed to notify the Administrative Law Division of its position in the case. It responded that it was not liable for the tax in issue because (1) the Department should be estopped from collecting the additional 3 percent tax, and (2) the Homewood lodgings tax levy in effect during the period in issue was defective because it was not parallel with the State lodgings tax statute, as required by Code of Ala. 1975, §11-51-202(b).

Another hearing was conducted on June 16, 2011. James Harris represented the Taxpayer. Assistant Counsel Keith Maddox represented the Department. The Taxpayer again argued that the Department was estopped from collecting the disputed taxes, and also that the Homewood lodgings tax levy was defective because it was not parallel to the State lodgings tax levy. The Department responded that because it “was acting pursuant to judicial rulings, the Department cannot be estopped from assessing and collecting the tax pursuant to the valid and enforceable Homewood Ordinance, . . .” Department’s August 8, 2011 letter brief at 3.

Concerning the Taxpayer’s estoppel argument, the Alabama Supreme Court has repeatedly held that the Revenue Department cannot be estopped in its duty to assess and collect taxes. *Community Action Agency of Huntsville, Madison County, Inc. v. State*, 406 So.2d 890 (Ala. 1981); *State v. Maddox Tractor & Equipment*, 68 So.2d 426 (Ala. 1953). The above cases are based on Art. I, §100 of the Alabama Constitution of 1901, which

prohibits the cancellation, postponement, or release of a debt owed to the State, except by payment. Section 100 by specific language also applies to debts held or owed “by any county or other municipality thereof. . . .” Consequently, the Department also cannot be estopped from assessing the Taxpayer for the taxes owed to the City.

The Taxpayer also contends that the City ordinance by which the tax in issue was levied was invalid because it did not parallel the applicable State levy, as required by Code of Ala. 1975, §11-51-202(b).

The Jefferson County Circuit Court did hold in its January 15, 2009 Order in the *Residence Inn by Marriott* case that the City of Homewood tax did not parallel the applicable State tax, and consequently, that the Homewood ordinance that levied the tax was invalid and void. The Court did, however, later void its January 15, 2009 Order after the parties settled.

The legal effect of the Court voiding its January 15, 2009 Order is irrelevant because the Administrative Law Division, as a part of an Executive Branch agency, is not authorized and does not have the jurisdiction to declare a statute or ordinance unconstitutional, *Beaird v. City of Hokes Bluff*, 595 So.2d 903 (1992), and likewise also is not authorized or have jurisdiction to declare a duly enacted statute or ordinance invalid or void for any other reason. See, *State of Alabama v. Addison Steel Truss Company*, Docket S. 91-193 (Admin. Law Div. 1/16/1992). That authority is fixed exclusively with the courts in the Judicial Branch.

Because the Department cannot be estopped from assessing the City of Homewood tax in issue, and because the Administrative Law Division cannot declare the City of

Homewood ordinance in issue to be invalid, the tax and interest in issue must be affirmed. The penalty included in the final assessment is waived for reasonable cause under the circumstances. Judgment is entered against the Taxpayer for local lodgings tax and interest of \$23,255.25. Additional interest is also due from the date the final assessment was entered, July 31, 2006.

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

Entered April 5, 2012.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

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