

WANDA BUSH  
D/B/A WARRENS TAVERN  
1009 WATER AVENUE  
SELMA, AL 36701-4618,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

§  
§  
§  
§  
§  
§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 07-927

### FINAL ORDER

The Revenue Department assessed Wanda Bush ("Taxpayer"), d/b/a Warrens Tavern, for State sales tax for July 2000 through June 2006. 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 February 21, 2008. The Taxpayer attended the hearing. Assistant Counsel Wade Hope represented the Department.

The Taxpayer operated a tavern in Selma, Alabama during the period in issue at which she sold beer, whiskey, and wine. She also sometimes charged an admission fee for entertainment at the tavern.

The Department audited the Taxpayer for sales tax for July 2003 through June 2006. The examiner requested the Taxpayer's cash register z tapes, purchase invoices, and other sales records. The Taxpayer failed to provide her z tapes. The examiner consequently determined the Taxpayer's liability using a purchase mark-up audit. She also expanded the audit period to six years because the Taxpayer had underreported her liability by more than 25 percent. Code of Ala. 1975, §40-2A-7(b)(2)b.

The Taxpayer admittedly failed to collect sales tax on her whiskey sales and door receipts during the subject months. The Taxpayer was unaware her door receipts were

subject to the gross receipts "sales" tax levied at Code of Ala. 1975, §40-23-2(2). The Department examiner estimated the door receipts based on information provided by the Taxpayer. The Taxpayer does not dispute the estimated tax due on the receipts as determined by the examiner.

Concerning the tax on her whiskey sales, the Taxpayer testified that before she opened in July 2000, she telephoned the Department's Sales and Use Tax Division in Montgomery concerning whether sales tax was due on her alcohol sales. She claims she was informed that sales tax did not apply to her beer and whiskey sales. She was suspicious of the answer, and called back the next day. She claims that another Department employee informed her at that time that her beer sales were taxable, but not her whiskey sales. She thereafter collect tax on her beer sales, but not her whiskey sales.

The Taxpayer concedes that she owes some sales tax, but that because she received erroneous information from the Department concerning the taxability of her whiskey sales, she should not be liable for the full amount assessed. Her appeal letter reads in part:

I am in total agreement to pay some tax, but should not be this total amount. I do know ignorance of the law is no excuse, but before we had computers to locate information, we had to rely on phone calls to the Montgomery office for what we hoped was reliable information. That is what I did not receive, even though I tried to operate as legal as possible.

The Taxpayer is a competent businesswoman that filed her own sales tax returns during the period in issue. Based on information she received from Department employees, she believed in good faith that her whiskey sales were not taxable. Unfortunately for the Taxpayer, she is correct that her ignorance of the law, i.e., that

whiskey sales are taxable, is no excuse. Alabama law is also clear that the Department cannot be estopped from assessing a tax that is legally due because of erroneous advice given by a Department employee. *Community Action Agency of Huntsville, Madison County, Inc. v. State*, 406 So.2d 890 (Ala. 1981); *State v. Maddox Tractor and Equipment Co.*, 69 So.2d 426 (Ala. 1953).

The Department added a 5 percent negligence penalty to the tax due. That penalty is waived for cause under the circumstances. Code of Ala. 1975, §40-2A-11(h).

The final assessment, less the penalty, is affirmed. Judgment is entered against the Taxpayer for tax and interest of \$34,020.57. Additional interest is also due from the date the final assessment was entered, September 24, 2007. The Taxpayer should hear from the Department's Collection Services Division in due course concerning payment arrangements.

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

Entered February 28, 2008.

---

BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: J. Wade Hope, Esq.  
Wanda Bush  
Joe Cowen  
Mike Emfinger