

H. T. BARNES CO., INC.  
P.O. BOX 1327  
FOLEY, AL 36536,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 10-1019

### FINAL ORDER

The Revenue Department assessed H. T. Barnes Company, Inc. ("Taxpayer") for City of Foley sales tax for April 2007 through April 2010.<sup>1</sup> 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 January 25, 2011. Donald Watler represented the Taxpayer. Assistant Counsel Duncan Crow represented the Department.

The Taxpayer operates a wholesale window covering business within the police jurisdiction of the City of Foley.<sup>2</sup> The Taxpayer had reported and paid the one percent Foley police jurisdiction sales tax before July 2007.

Foley stopped providing police protection in its police jurisdiction in July 2007. The Taxpayer and several other businesses in the police jurisdiction were uncertain as to whether they still had to continue paying the one percent sales tax. The Taxpayer's owner contacted his CPA concerning the issue. According to the owner, the CPA contacted the City and was informed that the police jurisdiction sales tax no longer applied. The

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<sup>1</sup> The Revenue Department collects and otherwise administers the City of Foley sales tax for the City.

<sup>2</sup> The City of Foley police jurisdiction automatically changed to three miles beyond its corporate limits when the 2000 census showed that its population had exceeded 6,000. See, Code of Ala. 1975, §11-40-10.

Taxpayer, and several other businesses, thus stopped collecting and remitting the tax to the Department.

In June 2010, the City provided the Department with a list of businesses that were in its police jurisdiction. The Department investigated and identified the Taxpayer and various other businesses on the list that had not reported and remitted the one percent sales tax since July 2007. It assessed the Taxpayer and the other businesses accordingly. This appeal followed.

The Taxpayer's owner and several other affected business owners contacted the Foley City Council concerning this issue. The matter was discussed at a City Council meeting on September 20, 2010. The City conceded that there was some confusion concerning the location of the City's police jurisdiction, and also which businesses were within the jurisdiction. Some of the business owners that had been assessed by the Revenue Department also complained at the meeting that they had not been notified that they were still in the City's police jurisdiction, even though the City police had stopped patrolling the area. According to a news release issued by BaldwinCountyNow.com on September 24, 2010, Foley Mayor Koniar concluded the discussion on the issue by stating – "It is a council decision. We are going to check with legal and see what we can and can't do."

The Taxpayer's owner in this case testified that he, and presumably the other police jurisdiction business owners that have been assessed, have not heard from the City since the above Council meeting. The owner also indicated that he has since begun collecting and remitting the one percent tax to the Department.

The City of Foley, as the real party in interest, was directed to respond concerning its position in the case. The City subsequently indicated that it was not legally authorized to waive sales tax owed by a particular business, but that it was not opposed to the Administrative Law Division considering the unusual circumstances of the case in deciding the Taxpayer's liability. Specifically, the City does not oppose, and the Administrative Law Division so holds:

That H.T. Barnes Co., Inc. did not collect City of Foley municipal sales taxes from April 2007 through September 2010 due to understandable and legitimate confusion on its part following the City of Foley's cessation of certain police protection service in its police jurisdiction in 2007.

That because the sales taxes were not collected by the taxpayer from its customers during the period from April 2007 through September 2010, and because this situation persisted for such a long period of time, it would be unduly burdensome on that taxpayer to pay these sales taxes at this time.

The City also agrees that all penalties and interest should be waived under the circumstances.

The final assessment in issue is voided. Judgment is entered accordingly.

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

Entered March 4, 2011.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: Duncan R. Crow, Esq.  
Donald J. Watler  
Joe Cowen  
Mike Emfinger  
Mayor John Koniar  
Foley City Attorney J. Casey Pipes, Esq.  
Revenue Officer Meg Hellmich