QUICK N EZ, INC. 101 JOHN CARROLL DRIVE BIRMINGHAM, AL 35209-6969,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
Taxpayer,	§	DOCKET NO. S. 10-245
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed Quick N EZ, Inc. ("Taxpayer") for State sales tax for January 2005 through January 2009. 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 April 7, 2011. Greg Yaghmai represented the Taxpayer. Assistant Counsel Wade Hope represented the Department.

The Taxpayer operated two gas station/convenience stores and a liquor store in Birmingham, Alabama during the period in issue. The gas station/convenience stores opened in 2004. The liquor store opened in December 2007. The Taxpayer reported its monthly sales tax liability for the three businesses on a single return during the months in issue.

A Department examiner notified the Taxpayer in December 2008 that it was being audited for sales tax for December 2005 through November 2008. The examiner scheduled a meeting for January 5, 2009, and directed the Taxpayer to produce all of its sales tax-related records at that time.

The examiner rescheduled the meeting for February 23, 2009 at the Taxpayer's request. She also notified the Taxpayer that due to the delay, the audit period would be revised to February 2006 through January 2009.

The Taxpayer provided some scattered records at the February 23 meeting, including some monthly sales summaries, the corporation's 2006 and 2007 federal income tax returns, and the monthly bank statements for the two gas station/convenience stores. The examiner and the Taxpayer's president also executed a waiver of the statute of limitations at the February 23 meeting giving the Department until June 30, 2009 to assess the Taxpayer for the revised audit period.

The Taxpayer later provided the examiner with some purchase invoices for November 2008 through January 2009. It failed, however, to provide any sales records for the audit period. The Taxpayer's representative explained that the sales records had been destroyed by water when a pipe burst in the storeroom where they were being stored.

The examiner determined that because the Taxpayer had failed to provide cash register tapes or other sales records, the Taxpayer's liability should be computed using an indirect purchase mark-up audit. As explained below, a retailer's taxable retail sales are determined per a purchase mark-up audit by computing the retailer's wholesale purchases for the audit period and then applying an estimated retail mark-up percentage.

The examiner identified the Taxpayer's vendors from its canceled checks and the few purchase invoices provided by the Taxpayer. She requested information from the vendors concerning the Taxpayer's wholesale purchases during the audit period. All of the vendors, except two, provided the examiner with the purchase information. Bama Budweiser asked the examiner to review the purchase information at its offices. The examiner did so. Another company, Capitol Wholesale, failed to timely provide the purchase information to the examiner. The examiner thus used four invoices she had from Capitol Wholesale concerning the two convenience stores dated January 2009. She

averaged and projected those purchase amounts over each month of the audit period.

After determining the Taxpayer's monthly purchases, the examiner computed the Taxpayer's monthly taxable sales by applying the standard 51 percent IRS mark-up applicable to gasoline station/convenience stores. She then allowed the Taxpayer a credit for tax previously reported and paid in the subject months to determine the additional tax due.

The Taxpayer provided the examiner with a January 1, 2005 beginning inventory figure of $119,057.56, and a January 31, 2009 ending inventory figure of $365,137.02.[1] The examiner accepted those amounts as correct. In computing the total tax, penalties, and interest due, the examiner added the January 2005 beginning inventory of $119,057.56 and the Taxpayer's January 2005 sales of $83,570.62, per the audit, to arrive at a January 2005 taxable measure of $202,628.18. The 4 percent State tax on that amount was $8,105.13. A credit for tax previously reported and paid of $786.89 was allowed, to arrive at additional tax due of $7,318.24. Interest of $2,292.51 and penalty of $1,097.73 was computed on the additional tax due from the February 20, 2005 due date of the January 2005 return, for a total due for January 2005 of $10,708.46. See, Dept. Ex. 2.

The Taxpayer's liability for each month after January 2005, except the last month of the audit, was computed using the taxable sales for each month, as computed per the purchase mark-up audit, times the 4 percent sales tax rate, less a credit for tax previously reported and paid, plus applicable interest and penalties.

[1] As explained below, the audit period was expanded during the audit to go back to January 2005.

Concerning the last month of the audit period, January 2009, the examiner subtracted the Taxpayer's taxable sales for that month from the ending inventory amount of $365,137.02 to arrive at a negative taxable measure of ($279,278.99) for the month. After allowing a credit for tax previously paid, there was a tax credit due for the month of ($12,882.08). The examiner also allowed the Taxpayer a credit of ($495.52) for interest due on that amount, computed from the February 20, 2009 due date of the return, but no adjustment was made for penalties.

The above computations showed that the Taxpayer had underreported its taxable sales by substantially more than 25 percent during the audit period. Code of Ala. 1975, §40-2A-7(b)(2)b. provides that if a taxpayer underreports its taxable base by more than 25 percent, the Department can assess the taxpayer for an extended six year period. The examiner thus expanded the audit period back to January 2005.[2]

The examiner completed the audit in mid-2009. The Department subsequently entered a preliminary assessment against the Taxpayer for the tax due, plus penalties and interest. The Taxpayer petitioned for a review of the preliminary assessment and argued, among other things, that the 51 percent mark-up was excessive. A January 14, 2010 letter from the assessment officer to the Taxpayer's representative reads in pertinent part – "In your letter, you further state your position that the 35% markup should have been applied in

[2] As explained below, the examiner's initial 51 percent mark-up was later reduced to 35 percent. Even with that reduction, however, the Taxpayer's reported monthly sales, i.e., its taxable base, were clearly and substantially less than its actual taxable monthly sales per the purchase mark-up audit. See, Dept. Ex. 5. For example, the Taxpayer's sales for May 2005 per the audit were $87,433.33, but the Taxpayer only reported sales of $23,362.05 for the month. The Taxpayer's sales for February 2007 per the audit were $76,319.47, whereas the Taxpayer's reported sales for the month were $25,264.25. The discrepancies in the other months of the audit period are similar.

the audit rather than the 51% markup used by the Examiner." The assessment officer subsequently agreed that the mark-up should be 35 percent. The Department reduced the audit accordingly, and entered the final assessment in issue on January 27, 2010 for the reduced tax due, plus penalties and interest.

The Taxpayer timely appealed the final assessment to the Administrative Law Division by letter dated February 25, 2010. The Administrative Law Division sent a March 1, 2010 letter to the Taxpayer's representative acknowledging receipt of the appeal. It also submitted a "Notice To Legal Division" on that date directing that Division to file an Answer in the case.

The Administrative Law Division received and file-stamped the Department's Answer on or before Tuesday, June 1, 2010.

The Taxpayer filed a motion to dismiss the final assessment on September 15, 2010. Attached to the motion was a copy of the Department's Answer in the case that had been faxed on Sunday, May, 2010. The copy also showed an Administrative Law Division date stamp of May 28, 2010. The Taxpayer argued in its motion to dismiss that the final assessment should be dismissed because the Department's Answer was not filed within 90 days, as required by Code of Ala. 1975, §40-2A-9(c). The Administrative Law Division denied the motion by Preliminary Order dated September 28, 2010. As indicated, a hearing was conducted in the case on April 7, 2011.

The Taxpayer argues that:

(1) The final assessment should be dismissed for the reasons previously asserted in the Taxpayer's motion to dismiss;

(2) The Department examiner lacked adequate qualifications and experience to properly conduct the audit;

(3) The vendor records relied on by the examiner were unreliable, incomplete, and inadmissible as evidence;

(4) The waiver executed by the parties was "a product of fraud" by the Department; and

(5) The audit contains errors in calculations and methodology.

Issue (1) The Motion To Dismiss.

The September 28, 2010 Preliminary Order Denying Taxpayer's Motion to Dismiss reads in part:

> The Taxpayer contends in its motion that the Department faxed its Answer in the case to the Administrative Law Division on March (May) 31, 2010 at 8:19 p.m. However, the information on the top of the faxed Answer shows only that it was faxed from 334-244-0825 on May 31, 2010. It does not indicate the number or numbers it was faxed to, and the Administrative Law Division's file does not include a faxed Answer that was received on May 31 or any other date. The faxed Answer was, however, apparently submitted to the Administrative Law Division before May 31 because it shows an Administrative Law Division date stamp of May 28, 2010.
>
> In any case, the Division's records show that a hard copy of the Department's Answer was received and date stamped by the Division on Tuesday, June 1, 2010. That date is 92 days after the March 1, 2010 date the Legal Division was mailed notice of the Taxpayer's appeal. But because the 90th day, Sunday, May 30, fell on a weekend, and because the 91st day, Monday, May 31, was Memorial Day, the Department had until the next business day, Tuesday, June 1, to file its Answer. See, Dept. Reg. 810-14-1-.24 and *JSC Brewton, Inc. v. State of Alabama*, Corp. 07-554 (Admin. Law Div. Order Denying Taxpayer's Motion to Dismiss 12/3/2007). Consequently, because the Answer was deemed filed within the 90 days, the Taxpayer's motion is denied. (footnotes omitted)

The above facts and rationale still apply. Because the Department filed its Answer within the required 90 days, the Taxpayer's "renewed" motion to dismiss is denied.

Issue (2) The Examiner's Qualifications and Experience.

The Taxpayer argues that the Department examiner was not qualified to audit the Taxpayer because she lacked the proper experience and educational background. I disagree.

The examiner in question has worked for the Revenue Department since 2004. All new Department examiners are extensively trained, and the examiner in question also graduated from a sales tax audit training course in 2007.

The examiner has a degree in business administration from Huntington College, with a concentration in accounting. She testified at the April 7 hearing that her audit of the Taxpayer was her first purchase mark-up audit. She explained, however, that "[e]verything that I do I discuss with my supervisor. I verify my procedures with my supervisor. Any questions I have, and findings I have, I verify with my supervisor." (T. 38, 39)

The examiner's business degree with a concentration in accounting is clearly sufficient to qualify her as an examiner for the Department, and also to conduct a purchase mark-up audit. The indirect purchase mark-up audit is a simple, oft-used, and reliable Department method of computing a retailer's sales tax liability when, as in this case, the retailer fails to provide the Department with adequate sales records. See generally, *GHF, Inc. v. State of Alabama*, S. 09-1221 (Admin. Law Div. 8/10/10); *Thomas v. State of Alabama*, S. 10-217 (Admin. Law Div. O.P.O. 5/18/10); *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). The method is straightforward and simple. A retailer's wholesale purchases for the audit period are calculated based on records obtained from the retailer's vendors. A

reasonable and historically correct IRS mark-up percentage is then applied to determine the retailer's gross taxable sales. A credit for sale tax paid during the period is allowed to arrive at the additional tax due. The examiner in this case was more than qualified and competent to perform such an audit.

The fact that the audit in issue was the examiner's first mark-up audit also does not invalidate or otherwise taint the audit results. As explained by the examiner, she discussed everything concerning the audit with her supervisor, who verified that the audit was correctly performed. As discussed below, I may disagree with how certain information was treated or applied in the audit, but overall the examiner was qualified and competently conducted the audit.

Issue (3) The Reliability of the Vendor Information.

The Taxpayer contends that the examiner improperly used the vendor records in her audit because she "has no idea who produced the records, how they were produced, or when they were produced." It also asserts that the examiner "has no idea how an IRS markup is calculated." Taxpayer's Post-Hearing Brief at 7.

All taxpayers are burdened with the affirmative duty of maintaining adequate records from which their correct tax liablity can be accurately computed and/or confirmed by the Department. Code of Ala. 1975, §40-2A-7(a)(1). If a taxpayer fails to provide the Department with adequate records, for whatever reason, the Department is authorized to "calculate the correct tax . . . based on the most accurate and complete information reasonably obtainable." Code of Ala. 1975, §40-2A-7(b)(1)a.

Because the Taxpayer in this case failed to provide the Department examiner with any sales records, the examiner correctly computed the Taxpayer's total purchases during

the audit period using its vendor's records, i.e., the best information obtainable. She then correctly applied the standard IRS mark-up for gasoline station/convenience stores that the Department routinely uses when conducting a purchase mark-up audit.

I agree that the Department examiner "has no idea who produced the (vendor) records, how they were produced, or when they were produced," but that is true of every Department examiner that has ever conducted a purchase mark-up audit. The key fact is that the vendor records were the best and most accurate information obtainable, and thus were properly used by the examiner in computing the Taxpayer's wholesale purchases. The Taxpayer's accountant, Steve Schniper, also states in an affidavit attached to the Taxpayer's brief, that "[s]ince it is stated that the State sought information from vendors due to incomplete records from Taxpayer, it is assumed that this information would be correct and acceptable since coming from unrelated, impartial parties." I agree.

As discussed, vendor records are the best and most accurate source in determining a retailer's wholesale purchases for purposes of a purchase mark-up audit. The Department is statutorily authorized to use those "most accurate and complete" records in computing the retailer's sales tax liablity, "and the taxpayer, having failed in the duty to keep good records, cannot later complain that the records and/or method used by the Department is improper or does not reach a correct result." *Jones v. C.I.R.*, 903 F.3d 1301 (10th Cir. 1990); *State v. Ludlum*, 384 So.2d 1089 (Ala. Civ. App.), cert. denied, 384 So.2d 1094 (Ala. 1980) (A taxpayer must keep records showing the business transacted, and if the taxpayer fails to keep such records, the taxpayer must suffer the penalty of noncompliance.) *Melton v. State of Alabama*, Docket No. S. 10-376 (Admin. Law Div. 11/4/2010) at 7.

The fact that the examiner had no first hand knowledge concerning how the IRS determines its mark-up percentages is also of no consequence. The IRS average mark-up information is included in the Department's audit manual, and has been routinely used by the Department for years, if not decades. The IRS mark-up percentages are necessarily estimates, but are the best information available in lieu of a taxpayer' actual records.

The Taxpayer argues that the reduced 35 percent mark-up is still too high for its package store sales because a competitive State ABC store is locate nearby. That may be true, but that also may be why the Department hearing officer reduced the overall mark-up from 51 percent to 35 percent. Assuming the Taxpayer's three stores had identical total sales, and also that the 51 percent mark-up for the two convenience stores per the IRS mark-up manual is correct, then reducing the overall mark-up to 35 percent would reflect a small (3 percent) mark-up applicable to the Taxpayer's package store. That is more than reasonable.

The Taxpayer's prior representative also argued to the Department hearing officer that a 35 percent mark-up should be used in lieu of the examiner's 51 percent mark-up. As discussed, the hearing office agreed and lowered the mark-up to 35 percent. Having initially argued for the 35 percent mark-up, the Taxpayer cannot now argue that it is excessive.

The package store also did not open until December 2007. As indicated, however, the reduced 35 percent mark-up, which presumably takes into account the reduced mark-up at the package store, was applied to the entire audit period. The Taxpayer thus benefited from the reduced 35 percent versus 51 percent mark-up at the two convenience stores from January 2005 through November 2007, even thought the package store was

not open during that period.

Issue (4) The Waiver.

The Department examiner and the Taxpayer signed a waiver of the statute of limitations on February 23, 2009 that gave the Department until June 30, 2009 to assess the Taxpayer for the revised audit period February 2006 through January 2009. The Taxpayer contends that the Department examiner misrepresented to the Taxpayer the purpose for the waiver and fraudulently induced the Taxpayer to sign the waiver. There is no evidence supporting that claim.

The purpose for a waiver is to allow the Department sufficient time to review a taxpayer's records and then assess the taxpayer for any additional tax that may be due for the audit period in issue. The revised audit period in this case was February 2006 through January 2009. The general three year statute of limitations for assessing the Taxpayer for February 2006 would have expired on March 20, 2009, or three years from the due date of the February 2006 return. The statute for March 2006 would have expired on April 20, 2009, and so forth. The examiner thus procured the waiver to allow her sufficient time, i.e., until June 30, 2009, to complete the audit without having to further adjust the audit period, i.e., drop the early months from the audit and simultaneously add subsequent months. The Department routinely obtains waivers for that purpose.

The Taxpayer's president signed the waiver in issue. He did not testify at the April 7 hearing, and there is otherwise no evidence indicating or even implying that the examiner misled the representative concerning the purpose or effect of the waiver. To the contrary, the waiver plainly states that "the taxpayer and the Alabama Department of Revenue hereby consent and agree" that the Department may assess the Taxpayer for sales tax for

the period February 2006 through January 2009 on or before June 30, 2009. The waiver is clear on its face. In any case, because the Taxpayer underreported its taxable base by more than 25 percent, the entire audit period back to January 2005 was within the expanded six year statute at Code of Ala. 1975, §40-2A-7(b)(2)b., even without a waiver.

Issue (5) The Claimed Audit Errors.

The Taxpayer presented testimony and the affidavit of accountant Steve Schniper in support of its claim that the Department's audit is flawed. Specifically, Schniper claims that the examiner (1) overstated the Taxpayer's total purchases; (2) improperly estimated the purchases from Capitol Wholesale; (3) improperly estimated and projected purchases without supporting records; (4) overstated the mark-up, which should have been 22 percent, not 35 percent; and (5) improperly used the beginning and ending inventory amounts.

Concerning the examiner's computation of the Taxpayer's total purchases, Schniper testified that he was provided vendor records by the Taxpayer's attorney. He reviewed those records, and the Taxpayer's bank records, and determined that the examiner had overstated purchases by $363,446 ($3,387,652 versus $3,024,207). See, Schniper affidavit. He conceded, however, that he did not know if he was provided all of the vendor information that the examiner used in her audit.

ALJ Thompson: So they may not have been all the records provided by Ms. Shill?

The Witness: There was an actual – there was a file that was e-mailed to me that contained – I cannot remember how many different files. But they were set up for various vendors, starting with Budweiser all the way down to Supreme Beverage, for instance, including Coca-Cola and people of that nature.

> We downloaded each and every file. Some of them were multi files; some of them were two and three different files. And that is – the two stacks that were on the left there are basically those two files that were downloaded.
>
> To say that it's everything that was used by the State of Alabama, I could not do that, sir.

(T. 151 – 152)

Schniper's computations may not have agreed with the examiner's computations, but as indicated, Schniper may not have been provided all of the vendor information used by the examiner. Consequently, Schniper's findings cannot be relied on to establish that the examiner's calculations are incorrect.

Schniper also states in his affidavit that the examiner estimated purchases for some periods by averaging, and that "[n]o estimates should be accepted in reconciling the purchases." The examiner did estimate or project the Taxpayer's purchases from Capitol Wholesale, but there is no evidence showing that the examiner's remaining purchase calculations were based on estimates.[3] Under the circumstances, the Taxpayer's purchases, as computed by the examiner, are affirmed, except as discussed below concerning Capitol Wholesale.

[3] The Department submitted the examiner's affidavit with its post-hearing brief. The examiner explains in the affidavit that some of her Birmingham (Bama) Budweiser purchase calculations were based on monthly averages and projections because the vendor could not provide records for some months. The Administrative Law Division has not considered that fact, or any other facts in the affidavit, in deciding the case because the Taxpayer's representative could not cross-examine the examiner concerning the facts asserted in the affidavit. In any case, the affidavit for the most part only reiterates the facts testified to by the examiner at the April 7 hearing.

The examiner testified that she attempted to obtain purchase information from Capitol Wholesale, but that the company failed and/or refused to cooperate. She consequently determined the Taxpayer's monthly purchases from Capitol Wholesale by using four invoices from January 2009 and projecting those monthly purchase amounts over the remaining audit months.

I agree that absent extraordinary circumstances, the Department should not use purchase estimates in a purchase mark-up audit. In a recent mark-up audit case, the Administrative Law Division held that the Department had improperly used purchase projections based on certain high purchase amount months in the audit period.

> This case is different than the above-cited purchase mark-up audit cases because in the prior cases, the Department used the taxpayer's purchase invoices and/or vendor records to determine the taxpayer's actual monthly purchases. That is, no average monthly purchase amounts were used. In this case, however, as discussed, the Department used the Taxpayer's invoices for certain high purchase amount months to compute the average monthly purchase amount. It then applied the average to all months in the audit period. I agree that doing so may have skewed the average upward.
>
> * * *
>
> Code of Ala. 1975, §40-2A-7(b)(1)a. provides that if the amount of tax reported on a return is incorrect, "the department may calculate the correct tax (due) based on the most accurate and complete information reasonably obtainable. . . ." The Taxpayer's vendors were required to keep accurate records of their sales to the Taxpayer, see Code of Ala. 1975, §40-2A-7(a)(1). The Department is also authorized to review those records, Code of Ala. 1975, §40-2A-7(a)(2). The vendors' records in issue were thus "reasonably obtainable" by the Department, and thus should have been obtained and used to perform the purchase mark-up audit of the Taxpayer.

Barnett v. State of Alabama, Docket No. S. 10-611 (Admin. Law. Div. O.P.O. 1/27/2011), at 3 – 4.

The above rationale also applies in this case. The Department should have subpoenaed the relevant purchase information from Capitol Wholesale. I understand that the Taxpayer refused to sign another waiver in June 2009, and consequently, that the examiner was under a time deadline to complete the audit. But the Department could have entered a statute-stopping preliminary assessment using the January 2009 invoices. It then could have obtained the actual purchase information from Capitol Wholesale and adjusted the Taxpayer's liability accordingly before entering the final assessment.

Under the circumstances, the Capitol Wholesale purchase projections should be removed from the audit and resulting final assessment. I also note that the examiner's audit report indicates that the Taxpayer claimed that it only began purchasing from Capitol Wholesale in July 2008. The actual Capitol Wholesale records would have either confirmed or refuted that claim.

Finally, the Department computed the January 2005 tax due by adding the January 2005 beginning inventory of $119,057.56 and the January 2005 sales of $83,570.62. The January 2005 tax due on the total of $212,628.18 was $8,105.13. After a credit for tax previously paid, the additional tax due was $7,318.24. The Department then applied the 5 percent negligence penalty and the 10 percent failure to timely pay penalty to that amount, which resulted in a penalty of $1,097.73 ($7,318.24 tax x 15 percent = $1,097.73). It also computed interest on the additional tax due from the February 20, 2005 due date of the return.

The Department used the ending inventory figure of $365,137.02 in allowing the Taxpayer a tax credit of ($12,882.08) in its January 2009 computations. But it made no penalty adjustment in that month, and it allowed the Taxpayer a credit for interest of only

($495.52), computed from the February 20, 2009 due date of that month's return.

Schniper contends that the above computations require the Taxpayer to pay excessive penalties and interest on the beginning inventory amount. I agree.

The Department correctly used the beginning and ending inventory amounts to compute the additional tax owed for the audit period. But only the sales tax due on the actual January 2005 sales, per the audit, should have been used as the basis for the interest and penalties due for that month. That is, the Department improperly computed interest and penalty on the beginning inventory amount. An offsetting interest credit was allowed on the ending inventory, but only from February 2009, and no penalty credit was allowed.

In summary, the Department examiner correctly used the purchase mark-up audit method in computing the Taxpayer's liability for the audit period. She also correctly used the Taxpayer's vendor information and the standard IRS mark-up in performing the audit. The audit is based on the best obtainable information under the circumstances, and except for the Capitol Wholesale projections and the penalty and interest computations on the beginning inventory amount, the additional tax due per the audit is affirmed.

The 5 percent negligence and 10 percent failure to timely pay penalties are also affirmed. I note that the Taxpayer substantially and consistently underreported its sales tax liability on its monthly returns during the audit period. For example, the Taxpayer purchased $55,770.78 in merchandise in July 2005, but reported sales for the month of only $24,196.68. In May 2006, it purchased $68,875.22 in merchandise at wholesale, but reported sales of only $25,210. It purchased $88,946.71 in April 2008, and reported sales of only $35,282.18 for the month.

The above is a representative sampling of the Taxpayer's monthly purchases and reported sales during the audit months, see Dept. Ex. 5, a copy of which is attached to this Order, and strongly indicates that the Taxpayer intentionally underreported its sales during the audit period. Obviously, no retailer can consistently purchase from $25,000 to $50,000 more in merchandise at wholesale in a month than it sells at retail in the month, as the Taxpayer repeatedly did during the audit period. The Department has applied the 50 percent fraud penalty in many such cases in the past, which the Administrative Law Division has affirmed on appeal. *Melton v. State of Alabama*, Docket S. 10-376 (Admin. Law Div. 11/4/2010); *GHF, Inc. v. State of Alabama*, Docket S. 09-1221 (Admin. Law Div. 8/10/2010); *Khanthavongsa v. State of Alabama*, Docket S. 07-728 (Admin. Law Div. 6/16/2008).

The Department should recompute the Taxpayer's liability by removing the projected Capitol Wholesale purchases from the audit, and also deleting the penalties and interest computed on the beginning inventory figure. It should then notify the Administrative Law Division of the adjusted amount due. An appropriate Order will then be entered.

This Opinion an Preliminary Order is not an appealable Order. The Final Order, when entered, may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered August 23, 2011.

_____
BILL THOMPSON
Chief Administrative Law Judge

bt:dr
attachment
cc: Warren W. Young, Esq.
Gregory F. Yaghmai, Esq.
Joe Walls
Mike Emfinger