

TAURUS INVESTMENT GROUP, LLC §
119 10TH AVENUE W.
BIRMINGHAM, AL 35204-3133, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer, §

DOCKET NO. S. 10-339

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

This appeal involves final assessments of State sales and rental tax for 4/09, 6/09, 7/09, and 8/09. A copy of the Department's Answer is enclosed with the Taxpayer's copy of this Order.

Bounce Rentals, LLC timely filed sales and rental tax returns for the months in issue, but failed to pay the reported amounts due. The Department subsequently entered the final assessments in issue against Taurus Investment Group, LLC for the reported tax due, plus penalties and interest. The account number on the assessments is, however, the account number of Bounce Rentals, LLC, ID # 26-0130477.

Taurus Investment Group, LLC is listed with the Alabama Secretary of State's office as the sole member of Bounce Rentals, LLC. Emmet Sims and Tanesha Sims are the sole members in Taurus Investment Group. The two members claim in their notice of appeal that the assessments should have been entered against Bounce Rentals, LLC, ID# 26-0130477. I agree.

Department Reg. 810-14-1-.15 governs the entry of final assessments by the Department. The regulation requires that the assessment must include the name and tax identification number of the taxpayer, the type of tax assessed, the correct taxable period, etc. The amount of a final assessment may be adjusted on appeal. Code of Ala. 1975,

§40-2A-7(b)(5)d.1. Otherwise, the substantive components of a final assessment must be correct, and cannot be corrected on appeal.

In *Knight v. State of Alabama, Inc.* 99-431 (Admin. Law Div. 5/23/2000), the Administrative Law Division held that a final assessment entered for the wrong tax period must be voided.

Due process requires that a final assessment must include the name of the taxpayer or taxpayers, the type of tax assessed, the tax period or periods involved, and the amount owed. See also, Department Reg. 810-14-1-.15. The amount of an assessment can be increased or decreased on appeal to reflect the correct tax due. Code of Ala. 1975, §40-2A-7(b)(5)d.1. Other than the amount, however, the other substantive components of a final assessment cannot be “corrected” on appeal. Specifically, the listing of a wrong tax period on an assessment is grounds for dismissal of the assessment. *Stallard v. U.S.*, 12 F.3d 489 (1994) (“And accurately ascertaining the correct tax period is more than a mere ‘technicality.’”) Consequently, the final assessment of 1996 income tax cannot be substantively changed to a final assessment of 1995 tax.

Knight at 2.

The above also applies to a final assessment entered against the wrong taxpayer. Consequently, the final assessments in issue must be voided. Judgment is entered accordingly. The Department may, of course, enter final assessments against the correct taxpayer, Bounce Rentals, LLC.

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

Entered July 6, 2010.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: J. Wade Hope, Esq.
Emmett & Tanesha Sims (w/enc.)
Joe Cowen
Mike Emfinger