

PROVIDENCE HOTEL PARTNERS,LLC§
d/b/a SPRINGHILL SUITES
308 N. PETERS RD., SUITE 110 §
KNOXVILLE, TN 37922, §

Taxpayer, §

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE. §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 12-1392

FINAL ORDER DISMISSING APPEAL

This appeal concerns the Department's denial of the Taxpayer's application for a sales tax exemption certificate. The Department has filed a motion to dismiss the appeal based on the Alabama Court of Civil Appeals' holding in *Rheem Mfg. Co. v. Ala. Dept. of Revenue*, 33 So.2d 1 (Ala. Civ. App. 2009). *Rheem* generally holds that the Administrative Law Division only has jurisdiction to review claims or issues initially raised by a taxpayer and previously decided by the Department. The Department contends that the Taxpayer's appeal should be dismissed because the Taxpayer raised a new issue on appeal that was not previously raised and addressed before the Department denied the Taxpayer's exemption certificate.

The Department's argument appears to be well-taken. The Taxpayer's exemption certificate application indicated that the exemption was being claimed because the food the Taxpayer's hotel was providing to its customers free-of-charge was being given away and not sold. The Department denied the exemption certificate because it found that the Taxpayer was the end user of the food that was being given away. Department's October 10, 2012 denial letter.

On appeal, however, the Taxpayer now asserts that the exemption certificate should be issued because “[t]his hotel sells rooms that include breakfast. Therefore, (the food) is built into the rate and not actually ‘free.’” Taxpayer’s November 15, 2012 appeal letter. The Taxpayer thus has raised a different issue on appeal that has not been investigated and decided by the Department.

The most efficient way to proceed would be for the Administrative Law Division to hold the appeal in abeyance and allow the Department time to investigate and gather information concerning the Taxpayer’s claim that the cost of the food is built into the room rates. If the Department thereafter concluded that the exemption certificate should still be denied, then the Division could then hold an evidentiary hearing and decide the issue.

The above procedure would allow the Department to in substance reopen the application process and address the issue raised by the Taxpayer in its appeal. The problem, however, is that if the Division subsequently ruled for the Taxpayer, the Department could argue on appeal that pursuant to *Rheem*, the Administrative Law Division did not have jurisdiction to hear the issue raised by the Taxpayer for the first time on appeal, even though the Department would have been allowed to investigate and decide the issue before the hearing in the case.

The better procedure is for the Administrative Law Division to dismiss the Taxpayer’s appeal and for the Taxpayer to reapply for an exemption certificate. The Taxpayer’s appeal is accordingly dismissed.

As indicated in the Department’s Response, the Taxpayer may file a new application for an exemption certificate and assert its new position as to why the certificate should be

issued. The Department may then investigate, and if the certificate is again denied, the Taxpayer may appeal to the Administrative Law Division, which would then have jurisdiction to hear and decide the issue.

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

Entered February 13, 2013.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Christy O. Edwards, Esq.
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