

CITY WHOLESALE, INC §
d/b/a CITY WHOLESALE GROCERY §
COMPANY, INC §
300 INDUSTRIAL DRIVE §
BIRMINGHAM, AL 35219-0208, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer, §

DOCKET NO. MISC. 12-708

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

**PRELIMINARY ORDER DENYING
TAXPAYER’S MOTION/REQUEST FOR FORMAL DISCOVERY
AND ISSUANCE OF SUBPOENAS**

This appeal involves a disputed final assessment of State tobacco products tax for May 2008 through June 2011 entered against the above Taxpayer. The Taxpayer requested in its notice of appeal to be allowed to conduct written discovery in the form of interrogatories, requests for production, and depositions to/of the Department of Revenue and various of its agents, as well as third party taxpayers that are also subject to the tax in issue.

The Taxpayer has now filed a formal Motion/Request for Formal Discovery and Issuance of Subpoenas. It claims in the motion that the “undersigned attorneys for the Taxpayer have discussed these (discovery/subpoena) matters with the attorney for the Department of Revenue (Christy L. Olinger) and she has indicated that Alabama Code § 40-2A-10 prevents her from providing Taxpayer with the information requested above related to any third-party taxpayer without a court order.”

While the rules of evidence applicable in circuit court apply in hearings before the Administrative Law Division, see Code of Ala. 1975, §40-2A-9(j), the circuit court discovery rules do not apply. “The Uniform Revenue Procedures Act at Code of Ala. 1975, §40-2A-7

et seq., does not include a discovery provision for appeals before the Administrative Law Division.” *J.C. Penney Properties, Inc. & J.C. Penney Company, Inc. v. State of Alabama*, Dockets F. 95-219 & F. 96-140 (Admin. Law Div. Third Preliminary Order 8/6/97). Because the Administrative Law Division does not have the authority to subpoena documents or testimony, to order pre-hearing depositions or interrogatories, or to otherwise compel either party to produce evidence, the Taxpayer’s motion must be denied. The Department attorney is also correct that any information relating to third party taxpayers is confidential tax information pursuant to Code of Ala. 1975, §40-2A-10.

But while the Department cannot divulge confidential third party tax information, it can provide the Taxpayer with the audit report that resulted in the final assessment in issue. That report should explain the computation methodologies used by the Department in conducting the audit. The Department examiner that conducted the audit and/or the examiner’s supervisor should also attend the hearing set in the case and be prepared to explain how the audit was conducted.

The case will be heard as scheduled at **11:00 a.m., January 17, 2013 at the Department’s Jefferson/Shelby Taxpayer Service Center, 2020 Valleydale Road, Suite 208, Hoover, Alabama.**

Entered January 2, 2013.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Christy O. Edwards, Esq.
Bruce L. Gordon, Esq.
Janet Stathopoulos
Randy Winkler