

D&M ONE STOP, INC.
745 MINERAL SPRINGS ROAD
PELL CITY, AL 35125-3417,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. S. 13-1067

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER

The Revenue Department assessed D&M One Stop, Inc. ("Taxpayer") for State sales tax for March 2009 through February 2012. 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 14, 2014. Dilip Sivanna represented the Taxpayer. Assistant Counsel Mary Martin Majors represented the Department.

The Taxpayer operated a gasoline station/convenience store in Pell City, Alabama during the period in issue. The Taxpayer's owner, Dilip Sivanna, opened the business in June 2004.

The owner worked outside of Alabama as a computer programmer during and before the period in issue. He consequently relied on his employees to operate the business for him. He explained, however, that some of his employees failed to maintain proper sales records, stole from the business, and otherwise failed to properly operate the business. He accordingly lost money, and was forced to close the business in September 2012.

The Department audited the Taxpayer for the subject period and determined that the business had failed to keep adequate sales records for the period. It consequently computed the Taxpayer's liability using an indirect purchase mark-up audit. The owner

does not contest the specifics of the audit. Rather, he contends that he should be granted some relief under the circumstances because his employees stole money and otherwise mismanaged the business.

All retailers subject to Alabama sales tax are statutorily required to keep complete accurate sales, purchase, and other records from which their correct sales tax liability can be computed. Code of Ala. 1975, §§40-2A-7(a)(1) and 40-23-9. A retailer's duty to keep sales records is straightforward and simple. The retailer must record all sales on a cash register z-tape and/or on customer invoices or receipts, which may then be compiled onto a monthly sales journal. It is commonly understood that such records must be maintained to allow the Department to verify that the correct amount of sales tax has been reported and paid.

The Taxpayer in this case failed to provide complete and accurate records. In such cases, the Department is authorized to compute a taxpayer's correct liability using the most accurate and complete information obtainable. Code of Ala. 1975, §40-2A-7(b)(1)a. The Department can also use any reasonable method to compute the liability, 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. CIR*, 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 for noncompliance). The Department examiner thus properly conducted a purchase mark-up audit to compute the Taxpayer's liability for the subject period.

The purchase mark-up audit is a simple, oft-used Department method of determining a taxpayer's sales tax liability when the taxpayer fails to keep accurate 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).

The final assessment in issue based on the purchase mark-up audit is prima facie correct, and the burden was on the Taxpayer to prove that it is incorrect. As indicated, the Taxpayer has failed to do so in this case.

The tax and interest assessed is affirmed. The Taxpayer's business is the owner's first and only retail business venture. He explained at the January 14 hearing that he believed that he could depend on his employees to properly and honestly operate the business for him. Unfortunately, that was not the case. Under the circumstances, the penalties are waived for cause. Code of Ala. 1975, §40-2A-11(h).

The final assessment, less the penalties, is affirmed. Judgment is entered against the Taxpayer for tax and interest of \$19,758.96. Additional interest is also due from the date the final assessment was entered, September 3, 2013.

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

Entered January 16, 2014.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Margaret Johnson McNeill, Esq.
Dilip Sivanna
Jane Mayberry