

RUBYS LLC AND ITS SOLE MEMBER §
RUBY LAWRENCE
512 KIRKLAND STREET §
ABBEVILLE, AL 36310-2715, §

Taxpayer, §

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE. §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 13-1121

FINAL ORDER

The Revenue Department assessed Rubys LLC, and its sole member, Ruby Lawrence ("Taxpayer"), for State sales tax for January 2010 through December 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 16, 2014. Ruby Lawrence and her representative, Jerry Collins, attended the hearing. Assistant Counsel Mary Martin Majors represented the Department.

The Taxpayer owns and operates a small restaurant in Abbeville, Alabama. The Department audited the restaurant for sales tax for the subject period. It requested the Taxpayer's cash register tapes, purchase invoices, bank statements, and all other sales tax related records.

The Taxpayer provided her bank statements and canceled checks for September 2011 and November 2011 through December 2012, and also some purchase invoices for various months in the audit period. She failed to provide the Department examiner with any cash register tapes or other sales records because she admittedly failed to maintain those records during the audit period.

The examiner determined the Taxpayer's deposits for the months in which bank records were provided. She next determined the Taxpayer's cash purchases in those months using the Taxpayer's purchase invoices. She then computed the Taxpayer's sales gross receipts in those months by adding the deposits and the cash purchases.

The examiner estimated the Taxpayer's sales for the months for which both bank records and invoices were not provided by projecting to those months the percentage of underpayment in the months for which records were provided. The total sales tax due was then computed for the entire audit period, and a credit was allowed for sale tax previously reported and paid to arrive at the additional tax due.

The Taxpayer's owner testified at the January 16 hearing that she runs her restaurant primarily to help needy people in the community. She explained that she has an old cash register, but that it didn't work during the audit period. She claimed that the business lost money, but that her husband and children gave her cash to pay the bills so that she could keep the restaurant open to serve the community.

The Taxpayer's representative argues that the Department audit is flawed because it assumes that all of the Taxpayer's bank deposits constituted taxable sales proceeds. He also claims that because the Taxpayer sometimes purchased merchandise with cash that was provided by her husband and her three children, taxing the money used to pay for those purchases also inflated the tax due per the audit. Finally, the representative asserts that many of the sales were to exempt entities or to customers in Georgia, and thus not taxable in Alabama.

All taxpayers subject to sales tax are required to keep complete and accurate records from which the Department can accurately determine the taxpayer's correct liability. Code of Ala. 1975, §§40-2A-7(a)(1) and 40-23-9; *State v. Mack*, 411 So.2d 799 (Ala. Civ. App. 1982). If a taxpayer fails to keep adequate records, the Department can use any reasonable method to compute the taxpayer's liability. The taxpayer cannot later complain that the liability so computed by the Department is inexact. *Jones v. C.I.R.*, 903 F.3d 1301 (10th Cir. 1990). Cash register tapes and/or other records reflecting actual sales are clearly the best information from which a retailer's sales tax liability can be determined or verified.

The Taxpayer's representative is correct that the additional tax due as determined by the Department audit is an estimate. But if the Taxpayer had maintained complete and accurate sales records, as required by Alabama law, there would have been no need to estimate her liability. The Department examiner thus reasonably computed the Taxpayer's liability under Alabama law using the best information available.

The representative may also be correct that some of the Taxpayer's cash purchases were paid for with money provided by the Taxpayer's family, and that some of the sales were not taxable, but there are no records verifying those claims. The government must have accurate, contemporaneous, and verifiable written records to accurately determine a taxpayer's true liability. It is not required to rely on a taxpayer's verbal assertions in lieu of those records. *State v. Ludlum*, 384 So.2d 1089 (Ala. Civ. App.), cert. denied 384 So.2d 1094 (Ala. 1980).

The final assessment is affirmed. Judgment is entered against the Taxpayer for tax, penalty, and interest of \$2,985.82. Additional interest is also due from the date the final assessment was entered, September 27, 2013.

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

Entered February 26, 2014.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Mary Martin Majors, Esq.
Ruby Lawrence
Jane Mayberry