

SPORTS PAGE DOWNTOWN ATHLETIC
217 S. 4th Street
Gadsden, AL 35901-4231,

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

DOCKET NO. S. 00-775

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed State and local sales tax against Sports Page Downtown Athletic, Inc. (Taxpayer) for June 1997 through May 2000. 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 May 29, 2001. The Taxpayer's representative was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Wade Hope represented the Department.

The issue in this case is whether the Department correctly computed the Taxpayer's sales tax liability for the subject period using the best information available.

The Taxpayer operated a lounge in Gadsden, Alabama during the audit period. The Department audited the lounge, and requested records from which its sales tax liability could be verified. The Taxpayer failed to provide any cash register tapes. The Department examiner consequently computed the lounge's taxable gross receipts using its bank records and purchase invoices.

The Taxpayer maintained three bank accounts during the subject period. The examiner computed the total deposits into those accounts. The Taxpayer failed to identify any of the deposits as non-taxable. The examiner thus treated the total deposits as taxable gross receipts from the business.

The Taxpayer's records also indicated that a number of items, including groceries, utilities, beer, and

liquor, were purchased with cash. To determine total cash purchases, the examiner matched the Taxpayer's purchase invoices with its canceled checks. If the Taxpayer had a purchase invoice for which a canceled check was not provided, the examiner assumed that the invoice was paid with cash from the business, and accordingly added those amounts to taxable gross receipts.¹

After computing total gross receipts as indicated above, the examiner deducted the membership dues received from the Taxpayer's customers. The examiner applied the four percent State rate and the applicable local rate to determine the gross tax due. He then allowed a credit for all tax reported and paid by the Taxpayer during the period.

It is common knowledge that any business subject to sales tax must keep adequate records showing the amount of sales and/or gross receipts subject to sales tax. Code of Ala. 1975, § 40-2A-7(a)(1). If a taxpayer fails to keep adequate records, the Department can compute the taxpayer's liability using the best records available. Code of Ala. 1975, § 40-2A-7(b)(1)a. The Department's calculations, if reasonable under

¹The examiner also found evidence that other non-invoiced items were paid with cash. For example, the owner's son managed the business. However, he received only one check for \$150 from the business during the entire audit period. It must be assumed that whatever else he was paid was in cash from the business.

the circumstances, will be affirmed, and the taxpayer cannot complain that the liability so computed is inexact. *Jones v. C.I.R.*, 903 F.3d 1301 (10th Cir. 1990). See also, *Red Brahma Club, Inc. v. State of Alabama*, S. 92-171 (Admin. Law Div. 4/7/95).

In this case, the Taxpayer failed to keep any cash register tapes. It also paid various vendors and creditors in cash. Under those circumstances, the Department examiner correctly computed the Taxpayer's liability using its bank records and purchase invoices. The examiner's computations are more than reasonable under the circumstances, and are affirmed.

The final assessments are affirmed. Judgment is entered against the Taxpayer for State sales tax, penalty, and interest of \$6,779.10, and local sales tax, penalty, and interest of \$2,194.63. Additional interest is also due from the date of entry of the final assessments, December 8, 2000.

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

Entered June 5, 2001.