

MANJEET SINGH, THE SOLE MEMBER§
OF AM PM FOODMART, LLC
A DISREGARDED ENTITY §
3700 PEPPERELL PARKWAY §
OPELIKA, AL 36801-6004, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

DOCKET NO. S. 13-241

v.

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed Manjeet Singh (“Taxpayer”), the sole member of AM PM Foodmart, LLC for State sales tax for November 2009 through October 2011. 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 August 22, 2013. CPA Tommy Crowley represented the Taxpayer. Assistant Counsel Kelley Gillikin represented the Department.

The Taxpayer operated a convenience store/deli in Opelika, Alabama during the period in issue.

The Department audited the Taxpayer for the period and requested all of the Taxpayer’s sales tax-related records. The Taxpayer provided some purchase invoices, income tax returns, monthly bank statements, z-tapes, and monthly sales tax reports. The Department examiner determined that the Taxpayer’s records were insufficient to allow him to determine the Taxpayer’s liability for the audit period. The examiner consequently conducted a purchase mark-up audit to arrive at the Taxpayer’s estimated gross receipts.

The examiner determined the Taxpayer’s wholesale purchases during the period using information from the Taxpayer’s vendors. He then applied the IRS statistical mark-up of 48% for food and beverage stores to the Taxpayer’s wholesale purchases to determine

the total tax due. He then allowed a credit for sales tax reported and paid during the period to arrive at the additional tax due.

The Taxpayer petitioned for a review of the preliminary assessment and argued that the 48% mark-up was too high. After review, the Department reduced the mark-up to 35%, and entered the final assessment in issue.

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 Taxpayer's representative argued at the August 22 hearing that the 35% mark-up is too high because the Taxpayer's business is located in a low income area. He also prepared a document showing a random sampling of what the taxpayer purchased various items for, what he sold them for, and the resulting mark-up, which ranges from minus 12% on some cigarettes to 35% on cookies.

The Taxpayer may be correct that the 35% mark-up used by the Department is too high, but if the owner had maintained complete and accurate records, there would have been no need for the examiner to compute the estimated mark-ups. The random sampling of mark-ups submitted by the Taxpayer's representative also cannot be relied on because the Taxpayer provided the numbers to the representative. As indicated, because the Taxpayer failed to keep good records, he cannot now complain that the Department's reasonable mark-up is too high.

The final assessment is affirmed. Judgment is entered against the Taxpayer for sales tax, penalty, and interest of \$15,745.37. Additional interest is also due from the date the final assessment was entered, January 17, 2013.

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

Entered August 28, 2013.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Kelley Askew Gillikin, Esq.
Tommy Crowley
Joe Walls
Mike Emfinger