

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. S. 86-100

JAMES A. VAUGHN,
d/b/a House of Glass & Pottery
Route 7
Athens, AL,

§

§

§

Taxpayer.

ORDER

This matter involves three preliminary assessments of State, Limestone County and City of Athens sales tax entered by the Revenue Department against James A. Vaughn, d/b/a House of Glass and Pottery (hereinafter "Taxpayer") concerning the period December 1, 1981 through January 31, 1982. The Taxpayer was represented at the hearing by the Hon. Dan Totten. The Revenue Department was represented by Assistant Counsel Arthur Leslie. Based on the evidence submitted at the hearing, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The undisputed facts, succinctly stated, are as follows: During December, 1981 and January, 1982, the Taxpayer operated a business within the city limits of Athens and therein made retail sales on which sales tax was collected. The Taxpayer filed for bankruptcy in the United States District Court in January, 1982. In March, 1982 the Taxpayer filed State, Limestone County and City of Athens sales tax returns for December, 1981 and January, 1982 indicating its sales tax liability for those months. The Taxpayer

amended his bankruptcy pleadings in August, 1982 showing the debt for sales tax owed to the State. The Department does not deny that it was notified of the Taxpayer's bankruptcy proceedings. The States's claim in bankruptcy was filed with the Bankruptcy Court in December, 1982. The Taxpayer was discharged from bankruptcy in January, 1983. On December 21, 1984, the Revenue Department entered the preliminary assessments in issue based on the Taxpayer's signed returns.

CONCLUSIONS OF LAW

The determinative issue is whether the Taxpayer's sales tax liability for the months in issue was discharged in bankruptcy. That question has been addressed in several United States Circuit Court cases, De Chiaro v. New York State Tax Commission, 760 F.2d 432 (2d Cir. 1985); Rosenow v. State of Illinois Department of Revenue, 715 F.2d 277 (7th Cir. 1983); and In re Fox, 609 F.2d 178 (5th Cir. 1980).

The above cases specifically hold that liability for a state sales tax which must be collected by the seller is not dischargeable in bankruptcy. The controlling federal statutes are 11 U.S.C. §523(a)(1)(A) and 11 U.S.C. §507(a)(6)(C). Section 523(a)(1)(A) provides that those taxes described in §507(a)(6) are not dischargeable. Section 507(a)(6)(C), known as the "trust fund" tax provision of the Bankruptcy Code, covers taxes that are "required to be collected or withheld and for which the debtor is

liable in whatever capacity". Alabama sales tax is a "trust fund" tax within the purview of the above section because it must be collected and paid over by the seller, see Code of Ala. 1975, §40-23-26. Consequently, pursuant to the above statutory authority and case law, the Taxpayer's sales tax liability for the period in dispute was not discharged in bankruptcy.

The above considered, the Revenue Department is hereby directed to make final the preliminary assessments in issue, with applicable interest as required by law.

Done this 24th day of October, 1986.

BILL THOMPSON
Chief Administrative Law Judge