

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

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DOCKET NO. R. 86-223

BUSINESS SYSTEMS, INC.
P. O. Box 1438
Anniston, AL 36202,

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Taxpayer.

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ORDER

This case involves a disputed preliminary assessment of lease tax entered by the Revenue Department against Business Systems, Inc. (Taxpayer) for the period February 1, 1981 through January 31, 1986. A hearing was conducted by the Administrative Law Division on March 25, 1987. Mr. Thomas Pope, President of the corporation, was present and represented the Taxpayer. Assistant counsel Wade Hope appeared on behalf of the Department. Based on the evidence and arguments submitted by the parties, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The relevant facts are not in dispute. The Taxpayer has been in the copier rental and sales business since at least 1972. In 1973 and 1976; the Taxpayer was audited by the Revenue Department for sales tax purposes. Although during the audit periods the Taxpayer had been engaged in the rental of copiers, no rental tax returns had been filed by the Taxpayer, and no rental tax liability was set up by the Department pursuant to the audits. According to the Taxpayer's representative, after each audit the Department's

examining agent informed the Taxpayer that its records were sufficient and that except for a small sales tax deficiency in 1976, the Taxpayer was complying with all of Alabama's revenue laws.

The Taxpayer was again audited by the Revenue Department in February, 1986. Upon an examination of the Taxpayer's records, the Department examiner set up the lease tax deficiency in issue. The Taxpayer does not dispute the technical accuracy of the audit, but argues that the Department should be estopped from assessing any additional tax liability because the Taxpayer had been advised after both the 1973 and 1976 audit that it was complying in full with all revenue laws. In effect, the Taxpayer contends that the Department should not be allowed to collect a lease tax deficiency because the Taxpayer had been informed by employees of the Department that no lease tax was due.

CONCLUSIONS OF LAW

The determinative issue is whether the Department can be estopped from collecting a tax that is otherwise due because the Taxpayer was given incorrect or misleading information by a Department employee.

The taxpayer has never filed or paid lease tax. After the 1973 and 1976 audits, no lease tax assessments were entered, and the Department's auditor allegedly acknowledge that the Taxpayer was complying with all applicable revenue laws. Accordingly, the Taxpayer assumed that no lease tax was due and continued not filing

returns or paying tax.

There is no reason not to believe the testimony of the Taxpayer's representative to the effect that various actions and statements made by Department personnel led the Taxpayer into believing that it was not liable for lease tax on its copier rentals. However, the law is clear that the Department cannot be estopped from assessing and collecting a tax because of incorrect or misleading statement made by a Department employee. State v. Maddox Tractor and Equipment Co., Inc., 59 So.2d 426; Boswell v. Abex Corporation, 317 So.2d 319; Community Action Agency of Huntsville, Inc. v. State, 406 so.2d 895. Accordingly, while the Taxpayer may have received incorrect, incomplete or misleading information from Department personnel, that alone is insufficient to relieve the Taxpayer of its clear and undisputed liability for lease tax during the period in dispute.

Based on the above, the Revenue Department is hereby directed to make final the preliminary assessment as entered with applicable interest as required by law.

Done this 16th day of April, 1987.

BILL THOMPSON
Chief Administrative Law Judge