

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. S. 86-225

BLANCH M. TURK
d/b/a Turk's Cash Store
Route 1 Box 2
Marvin, AL 36762,

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Taxpayer.

ORDER

This case involves two disputed preliminary assessments of State sales tax for the period April 1, 1983 through March 31, 1986 and Marengo County sales tax for the period August 1, 1983 through March 31, 1986 entered by the Department against Blanch M. Turk, d/b/a Turk's Cash Store (Taxpayer). A hearing was conducted on August 4, 1987. Blanch M. Turk was present and represented herself. Assistant counsel J. Wade Hope appeared on behalf of the Department. Based on the evidence submitted in the case, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The Taxpayer operates a retail grocery store/gasoline station. The Department audited the Taxpayer's records and determined that the Taxpayer had under reported both her State and Marengo County sales tax liability for the periods in dispute. According to the Department, in computing her sales tax, the Taxpayer twice deducted tax-exempt gasoline sales from total taxable gross receipts.

The audit was performed using the Taxpayer's sales records,

which the Department concedes were satisfactory. Those records were maintained as follows:

At the beginning of each workday, the Taxpayer started with \$200.00 in a cash receipts drawer. All money taken in during the day, from either cash sales or payments on previous credit sales, was placed in the cash receipts drawer. Cash payments were taken from a separate account. According to the Department's examiner, the Taxpayer confirmed during the audit that at the close of each day the receipts would be totaled and \$200.00 would be subtracted to arrive at total daily gross receipts. The Taxpayer would then subtract daily gasoline sales from total receipts and enter the balance in the "store" column of her sales notebook. The gasoline sales were listed in a separate "gasoline" column. However, in reporting sales tax, the Taxpayer would again subtract gasoline sales from the "store" column and report and pay tax thereon. Thus, the Department asserts that the Taxpayer subtracted the exempt gasoline sales twice from total gross receipts, once in arriving at the "store" column and again from the "store" column in reporting taxable receipts to the Department.

In conducting the audit, the Department examiner scheduled the Taxpayer's total cash sales and collections and then deducted gasoline sales and other exempt items. Consumer tax on beer and cigarettes was deducted and credit was allowed for sales tax paid to vendors for merchandise purchased for resale. Those items withdrawn for personal use and consumption by the Taxpayer were

added back to arrive at taxable gross proceeds.

The Taxpayer takes issue with the Department's determination that gasoline sales were subtracted twice from gross receipts. According to the Taxpayer, the "store" column in her sales book constituted total daily receipts, without deduction of the amount listed in the adjacent "gasoline" column, and thus that it was proper to subtract the gasoline sales from the "store" column in computing and reporting her liability to the Department.

In dispute of the Taxpayer's claim, the Department points out that the total of the combined "store" and "gasoline" columns for each year was approximately the same as the total sales figure reported by the Taxpayer on her individual income tax return. That fact illustrates, according to the Department, that the "store" column constituted only merchandise sales and collections after subtraction for gasoline sales, and not total sales of both merchandise and gasoline as contended by the Taxpayer. Otherwise, the two columns added together would greatly exceed total sales.

The Department further points out that on some days the "gasoline" column would exceed the "store" column amount, which could not happen if gasoline sales were included as part of the "store" column, as argued by the Taxpayer.

CONCLUSIONS OF LAW

The Department agrees that the Taxpayer's records were adequate as required by Code of Ala. 1975, §40-23-9. The only

issue in dispute is whether the "store" column in the Taxpayer's sales book included gasoline sales. All gasoline sales are exempt from sales tax under Code of Ala. 1975, §40-23-4(1). Thus, the Taxpayer should be allowed to deduct gasoline from gross receipts, but only once, and not twice as the Department claims the Taxpayer did in originally reporting to the State.

The Department's auditor testified that the Taxpayer had confirmed during the audit that gasoline had been deducted from and thus was not included in the "store" column amount. The Department presents two points in support of that argument. The first is that the daily "gasoline" column amount would sometimes exceed the "store" column for the same day. Obviously, according to the Department, if the "store" column included all gasoline, then it would have to be at least equal in amount to the "gasoline" column.

However, the Department's position is incorrect in that the "gasoline" column included both cash and credit sales of gasoline, whereas the "store" column, even if gasoline was included, constituted only cash sales and collections for the day. Thus, if a large volume of gasoline was sold on credit, that amount would be included in the "gasoline" column, but would not be a part of the "store" column. As a result, the "gasoline" column could in some instances be greater than the "store" column, which the Taxpayer argues was the case.

The Department's second argument is that the combined total

for both columns approximately equals the total sales reported on the Taxpayer's individual income tax return. ON this second argument, the Department's position is well taken. If gasoline was included in the "store" column, as argued by the Taxpayer, then the combined totals would include gasoline twice, once in the "store" column and again in the "gasoline" column, and would thus greatly exceed total sales. There is no reason to believe that the Taxpayer's income tax return showing total sales is incorrect. Thus, the Taxpayer's own income tax return verifies that the "store" column did not include gasoline. Consequently, the Department's position is upheld.

The above considered, the evidence indicates that the Taxpayer originally deducted gasoline sales in computing her "store" column figure, and consequently that the Taxpayer had incorrectly reported her sales tax liability by again subtracting gasoline sales from gross sales. Accordingly, the preliminary assessment in issue is correct and should be made final as entered, with applicable interest as required by statute.

Done this 26th day of August, 1987.

BILL THOMPSON
Chief Administrative Law Judge