

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. S. 86-244

DONALD P. WICKERSHAM
P. O. Box 236
Goodwater, AL 35072,

§

§

Taxpayer.

§

ORDER

This case involves two preliminary assessments of State sales tax for the periods November 1, 1982 through May 31, 1983 and June 1, 1983 through June 30, 1983 in the amounts of \$10,451.95 and \$603.43, respectively; and two preliminary assessments of City of Goodwater sales tax for the periods October 1, 1982 through May 31, 1983 and June 1, 1983 through June 30, 1983 in the amounts of \$5,266.05 and \$301.72, respectively.

The Taxpayer represented himself and the Department was represented by assistant counsel J. Wade Hope. As agreed by the parties, the matter was submitted for determination through a joint stipulation of facts, and the law relative to the issue in dispute, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

During the periods in question, the Taxpayer operated a grocery store in Goodwater, Alabama and made retail sales on which City of Goodwater and State sales tax was charged and collected.

The preliminary assessments in issue are based on signed returns

filed by the taxpayer.

On or about March 7, 1983, the Taxpayer and his wife filed a joint petition for bankruptcy under Chapter 7 of the federal Bankruptcy Act. The determinative issue to be decided is whether the filing of said bankruptcy petition (and presumably the Taxpayer's subsequent discharge in bankruptcy) discharged the Taxpayer from liability for the State and City of Goodwater sales taxes in issue.

CONCLUSIONS OF LAW

The issue of whether a taxpayer's state and local sales tax liability is dischargeable in bankruptcy has been addressed in several federal circuit court decisions. De Chiaro v. New York State Tax Commission, 760 F.2d 432 (1985); Rosenow v. State of Illinois, Department of Revenue, 715 F.2d 277 (1983); and In re Fox, 609 F.2d 178 (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 periods in dispute were 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 16th day of October, 1987.

BILL THOMPSON
Chief Administrative Law Judge