

STATE OF ALABAMA  
DEPARTMENT OF REVENUE,

§ STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
§ ADMINISTRATIVE LAW DIVISION

v.

§ DOCKET NO. S. 86-261

JAMES A. CARSON, d/b/a  
Carson's Spur Service Station  
601 Noble  
Anniston, AL 36201,

§  
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§

Taxpayer.

ORDER

This case involves three disputed preliminary assessments of sales tax entered by the Revenue Department (Department) against James A. Carson, d/b/a Carson's Spur Service Station (Taxpayer), for State sales tax (August 1, 1982 - July 31, 1985), Calhoun County sales tax (July 1, 1984 - July 31, 1985) and City of Anniston sales tax (August 1, 1982 0 July 31, 1985). A hearing was conducted in the matter on March 19, 1987. Mr. James A. Carson was present and represented himself. The Revenue Department was represented through assistant counsel Ron Bowden. Based on the evidence taken at the above hearing, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The Taxpayer operates an independent self-service gas station and convenience store. The Department audited the Taxpayer for the above periods using the cash transactions method, as was necessary because of the Taxpayer's failure to keep either a complete chronology of sales, a daily transactions journal, or complete

sales receipts. Through the audit, taxable gross proceeds were arrived at by determining total bank deposits, per the Taxpayer's records, plus cash payouts, less non-taxable items such as loans, gasoline sales, etc.

The Taxpayer objects to the audit on two grounds, the gasoline markup percentage applied by the Department's examiner, and the examiner's calculation of payouts for wine purchases.

Because the Taxpayer's gasoline purchase invoices were incomplete, the examiner was required to compute gasoline sales using the Taxpayer's sales tax returns. By comparing the documented pump prices with the available purchase invoices that could be verified, the examiner determined an average markup during the audit period of from two to six percent. After an evaluation of comparable businesses in the area, the markup was increased to ten percent.

The Taxpayer objects to the ten percent markup, arguing that it should be much greater. Application of a larger markup would increase non-taxable gasoline sales, which would correspondingly reduce the Taxpayer's taxable gross proceeds. However, the Taxpayer made only general objections to the markup and produced no records indicating that a greater markup should be allowed.

The Taxpayer's total gross proceeds were calculated from bank deposit records and cash payouts to vendors. During the course of the audit, the examiner discovered, through a wine vendor's records, that the Taxpayer had purchased wine for cash on several

occasions and yet had no record of a cash payout for wine on the day involved. The examiner accordingly increased cash payouts as indicated by the vendor's records.

The Taxpayer counters that the unrecorded wine payouts were designated as "groceries" on his sales records. However, on several of the dates that the wine vendor's records indicated cash sales to the Taxpayer, the Taxpayer's records indicated no payouts for either wine or groceries. In explanation, the Taxpayer asserts that in some instances his sales and payout records were recorded weekly, which resulted in some payouts not being recorded on the exact date on which they were made.

Numerous conferences were held between the Taxpayer and the Department in an effort to settle the matter. On each occasion the Taxpayer produced additional records from which the examiner was required to perform corresponding adjustments. The Taxpayer argues generally that he has not been allowed full credit for various items for which he has produced verifying records. However, the evidence shows that every specific item raised by the Taxpayer was considered by the examiner and that proper adjustments were made to the audit.

#### CONCLUSIONS OF LAW

Code of Alabama 1975, §40-23-9, requires all persons subject to sales tax in Alabama to keep and preserve suitable records from

which their liability can be accurately determined. If a taxpayer fails to properly record all transaction, then he must suffer the consequences, State v. Ludlum, 384 So.2d 1089; State v. T. R. Miller Mill Company, 130 So.2d 185, and the government is obliged to use the best information available to determine the taxpayer's liability. Goodman v. C.I.R., 761 F.2d 1622; Cummings v. C.I.R., 410 F.2d 675; Gibson v. U.S., 360 F.2d 457. Further, a taxpayer's records are not conclusive of liability and the government can look to other information for verification. Holland v. U.S., 348 U.S. 121, 75 S.Ct. 127. To rebut the government's computations, the taxpayer must not only show the government's calculations to be incorrect, but must also present facts (records) from which the correct liability can be determined. Gibson v. U.S., supra.

In the present case, the Taxpayer failed to maintain and produce complete records by which his sales tax liability could be directly verified. The inadequacy of the Taxpayer's records is illustrated by the fact that the Taxpayer continued the piecemeal production of various records at several informal conferences subsequent to the initial audit, and yet still did not provide a complete record of his transactions. Consequently, the Department's examiner was required to determine the Taxpayer's liability using the best available method, the indirect cash transaction audit.

The examiner determined the gasoline markup percentage to be from two to six percent using the partial invoices and sales price

records provided by the Taxpayer. When the Taxpayer objected, the examiner surveyed comparable stations in the area and, based thereon, increased the average markup to ten percent. The method used by the examiner was reasonable, and, the Taxpayer having produced no substantive evidence indicating that a different or high percentage should be applied, the examiner's computations should be upheld.

Concerning the cash payouts for wine, again the Taxpayer's records were inadequate. The point in dispute involves the cash purchases indicated on the wine vendor's records for which the Taxpayer's records had no corresponding entries. Those additional payouts were added to total gross proceeds by the examiner.

The Taxpayer protests, arguing that said purchases were designated as "groceries", and thus were already included as gross proceeds in the audit. The Taxpayer also explains that entries were sometimes posted weekly, and therefore sometimes did not appear on the actual day on which they were made. In short, the Taxpayer is attempting to cure his lax recordkeeping through his testimony to explain the discrepancies between his records and those of the wine vendor. However, §40-23-9 requires that a taxpayer's liability must be determined from contemporaneous records, and the Department is not required to rely on the Taxpayer's verbal assertions in lieu of such records. State v. Ludlum, 384 So.2d 1089; State v. Mack, 411 So.2d 799. In that the

Taxpayer's explanation concerning the missing wine payouts cannot be verified by his records, it is both necessary and proper to use the vendor's records in lieu thereof, and the Taxpayer must abide by the results.

The above considered, it is hereby determined that the Department's audit was reasonable under the circumstances and utilized the best available information. Accordingly, the assessments in issue should be hereby upheld. The Revenue Department is hereby directed to make said assessments final, with applicable interest as required by statute.

Done this 8th day of May, 1987.

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BILL THOMPSON  
Chief Administrative Law Judge