

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

v.

§

DOCKET NO. S. 87-175

ROBERT C. GUILLOT
d/b/a Guillot Hearing Aid Center
634 East Patton Avenue
Montgomery, AL 36111,

§
§
§

Taxpayer.

ORDER

The Revenue Department entered assessments of State, Montgomery County, City of Montgomery and City of Selma sales tax against Robert C. Guillot, d/b/a Guillot Hearing Aid Center ("Taxpayer") for all or a portion of the period November 1, 1983 through October 31, 1985. The Taxpayer incorporated and assessments were also entered against the corporation, Guillot Hearing Aid Center, Inc., for the period November 1, 1985 through November 30, 1986.

The Taxpayer appealed to the Administrative Law Division and a hearing was scheduled for June 29, 1989. The Taxpayer received notice of the hearing by certified mail on May 18, 1989. However, the Taxpayer failed to appear at the time and location set for the hearing. The hearing proceeded with the Department represented by assistant counsel Wade Hope. The following findings of fact and conclusions of law are hereby entered based on the evidence submitted at said hearing.

FINDINGS OF FACT

The Taxpayer sold hearing aids and accessories at retail during

the years in question. The Department audited the Taxpayer using records provided by the Taxpayer's accountant. Those records indicated that the Taxpayer had charged sales tax to his customers based on the full retail sales price, but had remitted tax to the Department based only on his cost of goods sold. The audit also revealed that the price charged by the Taxpayer sometimes included examination charges, but that such charges were not separately set out on the invoices.

The Department examiner computed the Taxpayer's gross sales, deducted all wholesale sales and exempt sales to the State of Alabama, and then applied the appropriate State, city or county tax rate to arrive at the tax owed by the Taxpayer. The Taxpayer was credited with tax already paid to arrive at the net deficiency due, which is the basis for the assessments in issue.

The Department was notified subsequent to entry of the preliminary assessments that the corporation, Guillot Hearing Aid Center, Inc., had filed a petition in bankruptcy with the United States Bankruptcy Court. Thus, the Department is presently pursuing only the assessments entered against Robert C. Guillot, d/b/a Guillot Hearing Aid Center.

CONCLUSIONS OF LAW

"Gross Proceeds of Sales" is defined for sales tax purposes to include the "value proceeding or accruing from the sale of tangible personal property, . . . including . . . the cost of the materials used, labor and service cost, interest paid or any other expenses

whatsoever,. . ." Code of Ala. 1975, §40-23-1(a)(6).

In the present case, the Taxpayer collected sales tax on the full sales price, but remitted tax based only on his cost of materials. Pursuant to §40-23-1(a)(6), the entire sales price should have been included as part of gross proceeds. Consequently, the Department properly assessed tax based on the full retail sales price.

In any case, the Taxpayer collected tax based on the full retail sales price charged to the customer. Thus, even if tax was not due on the full amount, as between the seller and the State any erroneously collected tax must go to the State. Ross Jewelers v. State, 72 So.2d 402.

The above considered, the assessments is issue against Robert C. Guillot, d/b/a Guillot Hearing Aid Center, are correct and should be made final, with statutory interest.

Done this the 6th day of July, 1989.

BILL THOMPSON
Chief Administrative Law Judge