

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. S. 88-173

RUSSELL COUNTY TAG COMMISSIONER§
P.O. Box 969
Phenix City, AL 36867,

§

Taxpayer.

§

ORDER

The Revenue Department entered a preliminary assessment of casual sales and use tax against the Russell County Tag Commissioner concerning the period January 1, 1986 through January 10, 1986. The assessment was appealed and a hearing was conducted on November 2, 1988. M. William Benton, Esq., the attorney for Russell County, was notified of the hearing, as was Mike Raiford, Esq., who represented Mr. Lamar Stroud, the Tag Commissioner during the period in question. Mr. Raiford appeared at the hearing on behalf of Mr. Stroud. Russell County was not represented. The Department was represented by assistant counsel J. Wade Hope. 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

Mr. Lamar Stroud was appointed as Russell County Tag Commissioner in August, 1984. The duties of the Tag Commissioner include the administration of the casual sales and use tax on automotive vehicles, trucks, etc. as levied by Code of Ala. 1975, §40-23-100, et. seq.

The Russell County Tag Commissioner is required by the above law to collect and pay over the amount due to the Revenue Department, less the fees required by §40-23-107. The office of Russell County Tag Commissioner is a salaried position. Accordingly, the fees set out by §40-23-107 are paid into the county treasury. Mr. Stroud resigned as Tag Commissioner on January 10, 1986, and a new Commissioner was appointed effective January 13, 1986.

Russell County failed to report and pay the casual sales and use tax for the month of January, 1986. Thus, the Department mailed a letter to Mr. Stroud in May, 1986, acknowledging that he had resigned as Tag Commissioner on January 12, 1986, but requesting that he file a return and pay the amount due for the period January 1, 1986 through January 12, 1986. The amount was not paid and the Department subsequently entered the assessment in question against the Russell County Tag Commissioner. The assessment is for tax of \$10,214.59, penalty of \$1,021.46, and interest of \$2,281.94 computed through May 30, 1988.

The tax due was subsequently reduced to \$9,980.59 based on an audit performed by the Examiner of Public Accountants. The Russell County Commission paid the tax due on June 30, 1988. The penalty was waived by the Department. Thus, the only issue in dispute is whether the interest on the assessed deficiency is owed by Russell County.

The Department contends that Russell County is ultimately

responsible for the tax and that any interest cannot be waived by the Department. Mr. Stroud agrees that Russell County, and not the Tag Commissioner personally, is responsible for the tax. However, Mr. Stroud adds that any interest owed by Russell County should be waived by the Department for good cause.

CONCLUSIONS OF LAW

Russell County is responsible to collect and pay over to the Revenue Department the casual sales tax levied by §40-23-100, et. seq. The only issue in dispute is whether the interest on any deficiency must be paid by the County.

Code of Ala. 1975, §40-23-105 provides that the sales tax statutes, specifically §§40-23-1 through 40-23-36, shall be applied in administering the casual sales tax law.

Code of Ala. 1975, §40-23-14 provides that penalty and interest shall be added to any deficiency. The penalty may be waived for good cause. However, there is no similar provision for waiver of the interest. In any case, there is no good cause in the present case why the interest required to be added to the liability should be waived. The County was clearly delinquent in paying over the tax to the Department. All interest due thereon should be paid.

The above considered, the Department is hereby directed to make the assessment in issue final based on the interest due from the due date of the tax to the date of payment by Russell County.

Entered this 13th day of December, 1988.

BILL THOMPSON
Chief Administrative Law Judge