

ALABAMA TAX TRIBUNAL

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| STEPHANIE S. COOK, | § | |
| Taxpayer, | § | DOCKET NO. S. 20-542-JP |
| v. | § | |
| STATE OF ALABAMA | § | |
| DEPARTMENT OF REVENUE. | | |

OPINION AND FINAL ORDER

Alabama's legislature requires everyone who sells tangible personal property at retail to be licensed by the Alabama Department of Revenue. Ala. Code § 40-23-6(a). Of course, the license is conditioned upon the retailer collecting and remitting sales tax in a correct and timely manner. *Id.*

In 2018, the legislature amended Ala. Code § 40-23-6 to require certain licensees to post a surety bond to avoid cancellation of their license. See Act 2018-508. The amendment requires the posting of a bond if a licensee "becomes non-compliant in the collection and remittance of sales tax during any period occurring on or after January 1, 2020 ... [A] licensee shall be deemed non-compliant when a final assessment that has been entered against the licensee is no longer subject to appeal and the licensee has not paid or otherwise satisfied the liability associated with the final assessment within 30 days from the date on which the final assessment was no longer subject to appeal. *Id.* Obviously, the purpose of the bond is to guarantee the licensee's collection and remittance of sales tax.

Here, the Revenue Department notified the Taxpayer that she was required to post a \$25,000 surety bond relating to the delinquent sales tax periods of February and March

2019. The Taxpayer appealed the demand for the surety bond to the Alabama Tax Tribunal, which is a separate state agency from the Alabama Department of Revenue. She stated that she needed additional time to pay her delinquent sales tax, penalties, and interest. She also stated that she had been turned down by an insurance company in her attempt to obtain a bond.

In its Answer to the Taxpayer's appeal, the Revenue Department stated that "[t]he taxpayer was deemed to be non-compliant on January 17, 2020 for the February and March 2019 filing period[s]. The taxpayer received notice of final assessment on October 25, 2019 and failed to file an appeal of the final assessment within the mandatory filing period." The Revenue Department did not explain the significance of the date of January 17, 2020.

In its Second Preliminary Order, the Tax Tribunal noted that "the period for paying the final assessment would have expired in December 2019, assuming that the final assessment was mailed to the Taxpayer on October 25, 2019. (The Taxpayer had 30 days from October 25, or until November 25 (with November 24 being a Sunday), to appeal the final assessment, and had another 30 days, or until December 26 to pay the unappealed assessment.) But Ala. Code § 40-23-6(c)(1) requires that a Taxpayer become noncompliant 'on or after January 1, 2020,' to be required to post a surety bond." The Revenue Department was directed to inform the Tax Tribunal if it still maintained that the Taxpayer was required to post a bond for the months of February and March 2019. The Revenue Department responded by arguing that "[t]he taxpayer was not deemed to be noncompliant until January 17, 2020 when she was mailed a final notice before seizure."

Although the Taxpayer was not required to respond to the Second Preliminary Order, she did so through her CPA representative. He stated that the Taxpayer had filed timely appeals and that he could furnish copies of those appeals.

On March 3, 2021, the Tax Tribunal conducted a conference call with the Taxpayer's representative and the Revenue Department's attorney. During that call, the Tax Tribunal discussed with the Revenue Department's attorney the possibility that the Taxpayer's "non-compliance" for the months of February and March 2019 occurred prior to January 2020 and thus did not fall within the provisions of the law that require the posting of a surety bond. The Revenue Department's attorney stated that, although the Taxpayer may have become non-compliant prior to January 2020, she continued to be non-compliant into 2020.

During that same call, the Tax Tribunal questioned the Taxpayer's representative about his statement that the Taxpayer had filed timely appeals. Specifically, the Tax Tribunal made clear to the Taxpayer's representative that the Revenue Department's entry of the final assessment against the Taxpayer was a completely separate event from the Revenue Department's demand for the posting of a surety bond. The Taxpayer's representative stated that he understood that fact. The Tax Tribunal then specifically asked the Taxpayer's representative if the Taxpayer had appealed the final assessment, and the representative said that she had. (At the least, a proper appeal of the final assessment would have delayed the Revenue Department's demand for a bond. Also, an appeal of the final assessment would have made it unnecessary for the Tax Tribunal to reach the question of whether the Taxpayer's non-compliance occurred prior to the effective date of the law requiring the posting of a bond.) The Tax Tribunal asked the Taxpayer's

representative for the docket number of the appeal of the final assessment. The representative stated that he did not have the docket number with him because he was out of his office. Thus, the Tax Tribunal directed the Taxpayer's representative to send to the Tax Tribunal a copy of the Taxpayer's appeal of the final assessment. The Taxpayer's representative said that he would do so. The Tax Tribunal went to great lengths during the call to make sure that the Taxpayer's representative understood that the Tax Tribunal was asking about an appeal by the Taxpayer of the final assessment entered by the Revenue Department for February and March 2019 and not about the Revenue Department's demand for a surety bond. (Obviously, the Tax Tribunal had the docket number and appeal papers of the Taxpayer's appeal concerning the surety bond, because it was that appeal that was the subject of the conference call.) The Taxpayer's representative assured the Tax Tribunal that the Taxpayer had appealed the final assessment and that he would send the docket number of that appeal to the Tax Tribunal.

Nevertheless, the Taxpayer's representative sent to the Tax Tribunal a copy of the appeal papers for this pending appeal – the appeal of the Revenue Department's demand for a surety bond – which is docket number S. 20-542-JP. The Tax Tribunal notified the Taxpayer's representative of this oversight by email and again asked the representative to send the docket number and appeal papers from the Taxpayer's appeal of the final assessment. The Taxpayer's representative responded, in part, as follows: "I have no idea what you are referring to."

It is obvious that the Taxpayer did not appeal the final assessment for the months of February and March 2019. That failure by the Taxpayer to appeal the final assessment

within 30 days and the Taxpayer's failure to then pay the final assessment in full within the following 30 days caused the Revenue Department to demand that the Taxpayer post a surety bond. Therefore, the Tax Tribunal must address the question of whether the Taxpayer became non-compliant on or after January 1, 2020. It is clear that she did not.

As stated, the Revenue Department sent the final assessment for February and March 2019 to the Taxpayer on October 25, 2019. Pursuant to Ala. Code § 40-2A-7(b)(5), the Taxpayer had 30 days, or until about November 24, 2019, to appeal the assessment, which she did not do. The 30-day period (beginning on or about November 24, 2019) to then pay the unappealed assessment would have ended on or about December 24, 2019. Even allowing for Christmas holidays and a weekend, the two time periods – first, to file an appeal of the final assessment and, then, to pay the assessment – would have ended prior to January 1, 2020. But Ala. Code § 40-23-6(c)(1) requires that a taxpayer become non-compliant "on or after January 1, 2020," to be required to post a bond. (emphasis added)

Because the time periods at issue here concerning appealing and paying the final assessment closed before January 1, 2020, the Taxpayer did not come within the scope of Ala. Code § 40-23-6(c)(1) as to the months of February and March 2019. Therefore, the Revenue Department's demand for the Taxpayer to post a surety bond for those two months is nullified. The Taxpayer is not required to post a surety bond concerning the final assessment for February and March 2019. There may be subsequent periods for which the Taxpayer became non-compliant on or after January 1, 2020, but any such periods are not the subject of this appeal.

It is so ordered.

This Opinion and Final Order may be appealed to the appropriate circuit court, pursuant to Ala. Code § 40-2B-2(m).

Entered May 27, 2021.

/s/ Jeff Patterson _____

JEFF PATTERSON

Chief Judge

Alabama Tax Tribunal

cc: Stephanie S. Cook
David E. Milam, CPA
Keyarrow A. Moore, Esq.