

ALABAMA TAX TRIBUNAL

DHANI PATEL, LLC & ITS SOLE,	§	
MEMBER BHARATKUMAR PATEL,	§	
Taxpayer,	§	DOCKET NO. MISC. 21-1134-JP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.	§	

FINAL ORDER

This appeal involves final assessments of state tobacco products tax, county tobacco tax, and county cigarette tax for the period March 2021. A trial was held on June 14, 2023. David Avery represented the Alabama Department of Revenue. The Revenue Department’s examiners, Dejuan Gunn and Courtney Bruce, testified. Revenue Managers James Wilson and Lee Poe also were present. Despite having been notified of the time, date, and place of the trial, neither the Taxpayer nor a representative of the Taxpayer appeared for trial.

The Taxpayer owns two stores in Roanoke, Alabama, which is in Randolph County: Patel Food Mart #1 and Patel Food Mart #2. Mr. Gunn testified that he inspected Patel Food Mart #1, and Mr. Bruce testified that he inspected Patel Food Mart #2. Mr. Gunn testified that he confiscated 276 individual cigars from Patel Food Mart #1 because of the Taxpayer’s failure to maintain the required invoices, which should have documented that the appropriate tax was paid on the cigars in the Taxpayer’s possession. According to Mr. Gunn, he proposed a confiscation penalty and a penalty for failure to maintain the appropriate invoices.

Mr. Bruce testified that he confiscated 75 packs of cigarettes from Patel Food Mart #2 because of the Taxpayer's failure to have the required county stamps on those packs. According to Mr. Bruce, those 75 packs either had no county stamps affixed to the packs or had the wrong county stamps affixed to the packs. Mr. Bruce testified that he proposed a confiscation penalty of \$25 per pack. Those proposed penalties relating to the inspections of the Taxpayer's two stores resulted in the final assessments in issue.

The Taxpayer submitted documentation along with the Notice of Appeal. However, both Mr. Gunn and Mr. Bruce testified that they had reviewed the documentation and determined that no changes to the assessment were warranted.

Section 40-25-8, Ala. Code 1975, provides, in pertinent part:

“Any cigarettes, smoking tobacco, cigars, stogies, cheroots, chewing tobacco, snuff, or other products taxable under this article found at any point within the State of Alabama, which the cigarettes, smoking tobacco, cigars, stogies, cheroots, chewing tobacco, snuff, or other products taxable under this article shall have been within the State of Alabama for a period of two hours, or longer, in possession of any retailer or semijobber not having affixed to the package the stamps as provided in this article, or in the case of products not requiring a stamp to be affixed where purchase invoices do not itemize the applicable tobacco taxes, are declared to be contraband goods and may be seized by the Department of Revenue, or its agents or by any peace officer of the State of Alabama, without a warrant and the goods shall be delivered to the Department of Revenue for destruction. Any of the goods, wares, or merchandise when offered for sale, either at wholesale or retail without the stamps having been first affixed, or in the case of products not requiring a stamp to be affixed where purchase invoices do not itemize the applicable tobacco taxes, shall be subject to confiscation as hereinabove provided....”

Section 40-25-13, Ala. Code 1975, provides, in pertinent part:

“It shall be the duty of every person, firm, corporation, club, or association of persons, receiving, storing, selling, or handling tobacco products enumerated herein in any manner whatsoever to keep and preserve all invoices, books, papers, cancelled checks, or other memoranda touching the purchase, sale, exchange, or receipt of any and all tobacco products enumerated herein. All such invoices, books, papers, cancelled checks, or other memoranda shall be subject to audit and inspection by any duly authorized representative of the Department of Revenue at any and all times. Each operator of a retail outlet shall receive, examine, and retain the purchase invoice from the source of the tobacco products for every purchase of tobacco products for a period of 90 days at the retail location.... Failure to acquire appropriate invoices, substantiate tax payment or retain invoices in the above manner may result in confiscation of the tobacco products in accordance with the procedures of this chapter. Any person, firm, corporation, club, or association of persons who fails or refuses to keep and preserve the records as herein required, or who upon request by a duly authorized agent of the Department of Revenue fails or refuses to allow an audit or inspection of records as hereinabove provided may be subject to a department imposed penalty of not less than five hundred dollars (\$500) nor more than one thousand dollars (\$1,000). This penalty is multiplied by the number of violations of this subsection.”

(emphasis added).

Section 40-25-18(a), Ala. Code 1975, provides in pertinent part:

“Persons failing to properly affix the required stamps to any cigars, cheroots, stogies, cigarettes, smoking tobacco, chewing tobacco, and snuff shall be required to pay, as part of the tax imposed hereunder, a penalty of not less than twenty-five dollars (\$25) nor more than five hundred dollars (\$500). Each article or commodity not having proper stamps affixed thereto as herein required shall be deemed a separate offense. Any cigars, cheroots, stogies, cigarettes, smoking tobacco, chewing tobacco, and snuff in the place of business of any person required by this article to stamp the same shall be prima facie evidence that they are intended for sale.”

Section 40-2A-7(b)(5)c.3, Ala. Code 1975, states the following: “On appeal ... to the Alabama Tax Tribunal, the final assessment shall be prima facie correct, and

the burden of proof shall be on the taxpayer to prove the assessment is incorrect.” Here, the Taxpayer has failed to meet the burden of proving that the assessments are incorrect. Therefore, the final assessments are upheld. Judgment is entered against the Taxpayer in the following amounts: \$7,911.30 for the state tobacco products tax assessment; \$7,933.47 for the county tobacco tax assessment; \$1,893.95 for the county cigarette tax assessment; plus additional interest that continues to accrue from the date of entry of the final assessments until the liabilities are paid in full.

This Final Order may be appealed to circuit court within 30 days, pursuant to Ala. Code 1975 § 40-2B-2(m).

Entered June 15, 2023.

/s/ Jeff Patterson
JEFF PATTERSON
Chief Judge
Alabama Tax Tribunal

jp:ac

cc: Ken Patel
David E. Avery, III, Esq.