

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

vs.

§

TRI STATE TRUCK SALES, a partner-
ship composed of Charles A. McGee
and Jimmy D. Little
301 Grand Avenue, South
Fort Payne, AL 35967,

DOCKET NO. S. 91-199

§

§

Taxpayer.

FINAL ORDER

The Revenue Department assessed State and City of Fort Payne sales tax against Tri State Truck Sales, a partnership composed of Charles A. McGee and Jimmy D. Little, for the period August 1988 through November 1990. Charles A. McGee ("Taxpayer") appealed the assessments to the Administrative Law Division. A hearing was conducted on January 24, 1995. The Taxpayer represented himself at the hearing. Assistant counsel Wade Hope represented the Department.

The issue in this case is whether the Taxpayer is liable for State and Fort Payne sales tax on numerous trucks allegedly sold by the Taxpayer in Alabama during the years in issue.

The Department discovered during a routine audit of another taxpayer that the Taxpayer in this case had purchased 50 trucks from the City of Chicago, Illinois. The trucks were purchased by the Taxpayer through K and H Truck Sales for \$8,500 each, or a total of \$425,000.

The Taxpayer is a practicing attorney and does not have a sales tax license or a license to sell motor vehicles in Alabama.

The Department investigated and determined that the Taxpayer had resold some of the trucks in Alabama in the name of Tri State Truck Sales.

The Department initially taxed all 50 trucks in Alabama. However, the Department subsequently determined that 4 of the trucks had been sold outside of Alabama, that Alabama sales tax had already been paid by the purchasers on 5 of the trucks, and that 19 other trucks were being held as collateral by a bank and had not been sold. The above 28 trucks were accordingly deleted from the audit.

Of the remaining 22 trucks, 3 were titled in the Taxpayer's name, 8 were sold to individuals or businesses in Alabama, and 11 were unaccounted for. The Department failed to find any evidence that tax had been paid on the above trucks. The Department accordingly assessed sales tax on those 22 trucks as follows: the 3 trucks titled to the Taxpayer were taxed at the Taxpayer's cost of \$8,500 each, a truck sold to Brown Brothers Grading Company was taxed at \$12,000 based on information received from Brown Brothers.¹ A truck sold to Paul Green was taxed at the \$15,000 sales price based on information provided by Green. The Department estimated the sales price of the unaccounted for trucks at \$15,000

¹ Brown Brothers had purchased other trucks from the Taxpayer, but showed the Department receipts that sales tax was paid on those trucks to the probate judge. Consequently, those trucks were deleted from the audit.

each based on the amount paid by Green. The Department adjusted the assessments to include only the above vehicles. The adjusted amounts due are State sales tax - \$8,895.07, and City of Fort Payne sales tax - \$2,703.46. The Taxpayer claims that he got involved with the trucks when he loaned Jimmy Little approximately \$50,000 as a down payment on the trucks. When Little failed to follow through on the purchase of the trucks, the Taxpayer purchased the trucks himself in lieu of forfeiting his \$50,000 down payment. The Taxpayer testified that Little is not a partner in Tri State Truck Sales.

The Taxpayer claims that most of the trucks were sold out of Chicago and thus never entered Alabama. He acknowledges that some trucks were sold in Alabama, but argues that no tax is owed because the purchasers paid Alabama sales tax when they licensed the vehicles with the probate judge.

The Taxpayer purchased the 50 trucks in issue for resale. Selling 50 vehicles does not constitute a "casual" transaction. Rather, the Taxpayer was in the business of selling the vehicles, and thus is liable for State and City of Fort Payne sales tax on

any vehicles sold in those jurisdictions.²

The Taxpayer was also required to keep sufficient records from which his correct sales tax liability could be determined by the Department. See, Code of Ala. 1975, §40-23-9 (pre-October 1992) and Code of Ala. 1975, §40-2A-7(a)(1) (post-September 1992). Unfortunately, the Taxpayer failed to produce any records concerning who purchased the vehicles, where they were sold, or how much they were sold for. Rather, the Department independently discovered that some of the vehicles had been sold in Alabama by

2. The evidence shows that the Taxpayer sold 5 or more trucks in Alabama in both 1988 and 1989, and thus should have been licensed as a used motor vehicle dealer pursuant to Code of Ala. 1975, §40-12-390, et seq. Also, the title application for the vehicles purchased by Brown Brothers Grading shows that the seller was K and H Truck Sales. Consequently, the Taxpayer also "skipped" title on at least 4 of the vehicles in violation of Code of Ala. 1975, §32-8-30, et seq., specifically, §32-8-44.

tracing the vehicle identification number for each truck. The Taxpayer also failed to explain or document the whereabouts of the 11 unaccounted for trucks that are included in the audit. The Taxpayer claims that the last of the unaccounted for trucks were recently sold in Florida. However, those trucks were some of the trucks being held as collateral by the bank, and consequently were not included in the audit in the first place. Finally, while the Taxpayer argues that the purchasers had paid sales tax when they registered the vehicles in Alabama, he failed to offer any tangible evidence supporting that assertion.

If a taxpayer fails to provide adequate records, the Department is authorized to assess tax based on the best information available. See, Code of Ala.1975, §40-2A-7(b)(1)a. The Department has taxed only those trucks for which the Taxpayer failed to provide any records, or failed to present proof that tax had been paid by the purchaser. It would have been a simple and routine matter for the Taxpayer to keep basic information about where the trucks were sold, who purchased them, and the selling price. He failed to do so. Consequently, he must be held liable.

The estimated sales prices used by the Department are also reasonable under the circumstances.

The assessments as adjusted are affirmed. Judgment is accordingly entered against the Taxpayer for State sales tax in the amount of \$8,895.07 and City of Fort Payne sales tax in the amount

of \$2,703.46.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered on February 23, 1995.

BILL THOMPSON
Chief Administrative Law Judge