

STATE OF ALABAMA,
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

vs.

§

MICHELLES'S CLUB, INC.
544 Mobile Street
Montgomery, AL 36104,

§

DOCKET NO. S.93-101

§

Taxpayer.

§

DAVE BRADFORD MEMORIAL
COMMUNITY DEVELOPMENT
c/o William B. Sellers, Esq.
P. O. Drawer 4540
Montgomery, AL 36103-4540,

§

DOCKET NO. S. 93-146

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§

Taxpayer.

§

HIDE-A-WAY SOCIAL AND CIVIC
CLUB, INC.
d/b/a Cabana Club III
618 Mobile Street
Montgomery, AL 36108,

§

DOCKET NO. S. 93-138

§

§

Taxpayer.

§

FINAL ORDER

The Revenue Department assessed State, Montgomery County, Autauga County and City of Prattville sales tax against Hide-A-Way Social and Civic Club, Inc. for the period April, 1989 through March, 1992; State and Montgomery County sales tax against Michelles' Club, Inc. for the same period; and State and Montgomery County sales tax against Dave Bradford Memorial Community Development for the period August, 1989 through May, 1992. All three Taxpayers appealed to the Administrative Law Division and the cases were consolidated and heard together on August 4, 1993. Will

Sellers appeared for the Taxpayers. Assistant counsel Wade Hope represented the Department.

Gross receipts from public bingo games are generally subject to the gross receipts sales tax levied at Code of Ala. 1975, §40-23-2(2). Fraternal Order of Eagles v. White, 447 So.2d 783. The issue in this case is whether the Taxpayers' bingo gross receipts were exempt pursuant to Code of Ala. 1975, §40-23-4(43). That section exempts the gross receipts of bingo games operated "by organizations which have qualified for exemption under the provisions of 26 U.S.C. §501(c)(3), (4), (7), (8), (10), or (19), or which are defined in 26 U.S.C. §501(d)."

The Taxpayers concede that they are not recognized by the IRS as exempt §501(c) organizations, but argue that they should still be exempt because they have the characteristics of a §501(c) entity. The Department counters that the exemption applies only if an organization has been formally recognized by the IRS as a §501(c) entity.

The Taxpayers are non-profit organizations that operated public bingo games during the period in issue. The bingo receipts were used by the Taxpayers to help needy individuals and organizations in their communities. None of the Taxpayers are recognized as a §501(c) organization by the IRS.

The Taxpayers did not pay sales tax on their bingo receipts until after they received a letter dated May 15, 1989 from Revenue

Commissioner Jim Sizemore to all bingo operators which stated that bingo receipts were subject to sales tax. Thereafter, the Taxpayers started reporting and paying sales tax on their bingo gross receipts.¹

The Taxpayers received a second letter from Commissioner Sizemore dated May 29, 1990 informing them of the newly passed exemption for certain bingo gross receipts set out at §40-23-4(43).

The letter quoted the exemption section, which states in part as follows:

The exemption provided for in this section shall be limited to those games and operations by organizations which have qualified for exemption under the provisions of 26 U.S.C. §501(c)(3), (4), (7), (8), (10), or (19), or which are defined in 26 U.S.C. 501(d).

The Taxpayers all assumed after reading Commissioner Sizemore's letter that their bingo gross receipts were exempt because the bingo money was used for charitable purposes. Accordingly, all three Taxpayers stopped reporting and paying sales

¹ There is evidence indicating that one or more of the Taxpayers failed to report and pay sales tax on their entire bingo receipts.

tax on bingo receipts after receiving Commissioner Sizemore's May 29, 1990 letter.

The Department subsequently audited the Taxpayers and assessed sales tax on their bingo and other gross receipts during the period in issue.²

In my opinion, the Department is correct that bingo gross receipts are exempt under §40-23-4(43) only if the bingo operator has been formally recognized by the IRS as an exempt §501(c) organization. The fact that the operator has some or all of the charitable characteristics of a §501 entity is not sufficient. IRC Reg. §1.501(a)-1 requires that an organization must apply with and be formally recognized by the IRS to be exempt under §501. Formal recognition by the IRS is necessary for and thus synonymous with being qualified as an exempt §501 organization.

² Two of the three Taxpayers also operated lounges, which were also included in the audits. None of the Taxpayers kept adequate records and thus the Department conducted "indirect" audits based on the best information available.

The exemption is worded so that only charitable organizations "which have qualified" with the IRS as a §501(c) organization are exempt, whereas religious organizations must only be "defined" by §501(d) to be exempt. If the Legislature had intended to exempt all charitable organizations that meet the definition of a §501(c) entity, as argued by the Taxpayers, it could have done so by using the same language used relative to §501(d) religious organizations.

The above holding is supported by the rule of construction that a tax exemption must be strictly construed against the taxpayer and for the Department. Brundidge Milling Co. v. State, 228 So.2d 475.

I recognize that holding the Taxpayers liable for the sales taxes in issue will hurt their worthwhile charitable efforts. However, the Taxpayers were not qualified §501(c) organizations during the period in issue as required by §40-23-4(43), and thus their bingo receipts were not exempt from sales tax.

The assessments in issue are upheld and judgment is entered against Michelles' Club, Inc. for State sales tax in the amount of \$41,021.50, and Montgomery County sales tax in the amount of \$15,385.75; against Hide-A-Way Social and Civic Club, Inc. for State sales tax in the amount of \$39,827.31, Montgomery County sales tax in the amount of \$14,586.12, Autauga County sales tax in the amount of \$159.92, and City of Prattville sales tax in the amount of \$512,36; and against Dave Bradford Memorial Community

Development for State sales tax in the amount of \$19,588.61, Montgomery County sales tax in the amount of \$8,085.81. Additional interest should be added to the Michelle's Club assessments running from December 21, 1992, the Hide-A-Way Social and Civic Club assessments from January 20, 1993 and the Dave Bradford Memorial Community Development assessments from February 9, 1993.

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

Entered on November 4, 1993.

BILL THOMPSON
Chief Administrative Law Judge