ARGO GRADING AND PAVING, INC. ' STATE OF ALABAMA
Post Office Box 2428 DEPARTMENT OF REVENUE
Phenix City, Alabama 36868-2428, ' ADMINISTRATIVE LAW DIVISION

Taxpayer, ' DOCKET NO. MV. 96-372

v. '

STATE OF ALABAMA '
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed motor vehicle license tax against Argo Grading and Paving, Inc. ("Taxpayer") for August 1995 through July 1996. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, '40-2A-7(b)(5)a. A hearing was conducted on November 21, 1996. Steve Argo represented the Taxpayer. Assistant Counsel John Breckenridge represented the Department.

This is a records case. The Taxpayer is required to keep specific records of the miles traveled by its trucks in the various states in which it operates. The issue in dispute is whether the Taxpayer's mileage records maintained during the subject period were sufficient and should be accepted by the Department.

The Taxpayer operates a grading and paving business headquartered in Phenix City, Alabama. The Taxpayer operated 22 trucks subject to the International Registration Plan ("IRP") during the audit period. The IRP is an agreement between the states for apportioning motor vehicle registration fees between the various states in which a truck operator does business. The Taxpayer's trucks operate in both

Alabama and Georgia, and thus are subject to the IRP.

The IRP requires a truck operator to register its trucks in its base state. The operator is required to report to the base state the total miles traveled in each state during the year. The operator pays the base state the total amount due. The base state then remits the apportioned tax due to the various states in which the operator's trucks traveled.

The IRP also requires the truck operator to keep detailed records of miles traveled in each state. See IRP Manual, State Ex. 8, and Department Reg. 810-5-1-.464. The above regulation specifically requires an operator to keep an "individual vehicle mileage record," which must include the following information - the starting and ending date of the trip, the trip origin and destination, route of travel and/or beginning and ending odometer or hubometer reading of the trip, total trip miles, mileage by jurisdiction, number of unit or vehicle identification number, vehicle fleet number, registrant's name, trailer number, and driver's signature. The operator must also maintain monthly totals of all miles traveled. If an operator fails to maintain the required mileage records, Reg. 810-5-1-.464 specifies that the operator may be subject to payment of the full fee to Alabama, at the discretion of the Commissioner.

The Taxpayer computed its mileage during the subject year by multiplying the total gallons of gas purchased by four miles per gallon. The Taxpayer then divided the miles traveled equally between Georgia and Alabama. The Taxpayer paid Alabama the total fee due both states, and the Department accordingly remitted one-half to

Georgia.

The Department audited the Taxpayer in January 1996, and requested the Taxpayer's mileage records. The Taxpayer provided daily inspection reports, which included the truck number, the driver's name, and the origin and delivery point. See, Taxpayer Ex. 1.[1] The reports did not include beginning and ending odometer readings, total miles traveled, or miles traveled in Georgia and Alabama. The Taxpayer claimed, however, that the actual miles traveled in both states could be reconstructed from the reports. The Department suspended the audit to allow the Taxpayer time to reconstruct its mileage records.

The Department resumed the audit in March 1996. The results are set out in a report by Department Examiner Jerome Hanks (Dept. Ex. 2), as follows:

> The audit was resumed on March 25, 1996 by Annie Patterson and Bill Spurlin. They recognized that a considerable effort had been made to calculate actual miles but concluded that the records were still insufficient. The records presented to them at that time are the same records which were examined again in this meeting. Findings resulting from the examination of these records were as follows:
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> Inspection reports were grouped by month and truck number. Not every report was looked at, but it appeared that most indicated the origin, pick up and delivery points which were identified by name of pit, work site and/or customer. Frequently, abbreviations or initials were used in lieu of full names. The number of trips made by each truck each day was indicated. Odometer readings at the beginning of each day were

[1]The origination and destination points were not specifically identified on the inspection reports. For example, the first report in Taxpayer Exhibit 1 indicates "hauled 15 loads from Moon Rd. to Summerville Rd." The third report indicates "7 loads from Rock Hole to Moon Rd." The seventh report indicates "1 load from Ft. Benning to trailer pk. 7 loads from 3 Arts to 8th Ave." The eighth report indicates only "McMath & Turner Talbot Co.", and so forth.

> recorded on approximately one fourth of the trucks in operation. Significantly, there was no indication on any of the inspection reports as to what state the pick up and delivery took place in. Neither were total miles nor state miles recorded on the reports.
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> I asked to see their recap of total miles and state miles resulting from their mileage reconstruction efforts. I was handed a stack of filled out forms representing the year 1994. The form had been specifically designed, as part of the mileage reconstruction task, to show for each truck on a monthly basis state miles. This mileage information was provided only for those trucks whose drivers recorded odometer reading. This was approximately one fourth of the total IRP registered trucks operating on any given day. Mr. Argo agreed that, in order to get the same information on the other trucks, it would require one of his employees working with a state examiner to identify pick up and delivery points and to estimate miles between points. He estimated it could take up to four days to do one quarter.
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> The company recorded for each of the trucks on which miles were calculated a percentage breakdown by state. These breakdowns indicated that the Alabama percent varied between 32% and 38% as compared to 50.514% calculated from miles previously reported on the IRP Mileage Schedule B for license year, 1996.
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> Mr. Argo and Mrs. Jones acknowledge that the reconstructed mileage records are not complete, but feel very strongly that the partially reconstructed miles are representative of the total and should be used to determine apportionment in lieu of charging the full Alabama fee.
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> There is no question that mileage records, at the time the audit was resumed in March, 1996 were only approximately one fourth complete. Even these would have been difficult to verify due to inadequate descriptions of pick up and delivery points. Also, there were no overall mileage recaps. In my opinion, the original audit findings were correct and the recommendation to charge the full Alabama fee was appropriate.

The Taxpayer's representative argues that although his records are not in the form required by the Department, they are sufficient to allow the Department to reasonably estimate miles traveled in Georgia and Alabama during the subject period.

The Alabama Court of Civil Appeals has held that for sales tax purposes, no particular method of record-keeping is required. State v. Mack, 411 So.2d 799 (Ala.Civ.App. 1982); State v. Ludlum, 384 So.2d 1089 (Ala.Civ.App.), *cert. denied*, 384 So.2d 1094 (Ala. 1980).

However, more recently, the Alabama Supreme Court held that a Department regulation requiring a specific method of record-keeping, if reasonable, must be followed. A taxpayer cannot use an alternative record-keeping method, even if the alternative method reasonably estimates the taxpayer's liability. White v. Shellcast Corporation, 477 So.2d 422 (Ala. 1985).

In Shellcast, a Department regulation required that taxable and nontaxable utility services must be recorded by separate meters. Shellcast failed to keep separate meters, but argued that its alternative method of estimating the exempt and taxable services accurately measured those services, and should be accepted.

The Supreme Court acknowledged that some of Shellcast's utility services were "unquestionably exempt." The Court nonetheless ruled that because Shellcast failed to separately meter the nontaxable services, as required by the regulation, all of its utility services could be taxed.

> Surely, the Department under its enforcement powers may -- nay must be able to adopt reasonable rules for enforcing the tax statutes. If its rules may be rejected by the contention, not of unreasonableness, but merely that the taxpayer may choose to follow another means of its own choosing of achieving the same end, each taxpayer may challenge every rule by showing that they have achieved the same result but by another

means. It is obvious that chaos in enforcement would result. Rules would mean nothing.

Shellcast, 477 So.2d at 423.

In this case, the Taxpayer's trucks certainly traveled a portion of their miles in Georgia. If the Taxpayer's records had substantially complied with Reg. 810-5-1-.464, then perhaps the records could be accepted as sufficient. But the records clearly do not comply with the regulation, and are otherwise insufficient to allow the Department to independently verify total miles traveled in Georgia and Alabama. The Taxpayer conceded that verbal explanations would be necessary for the Department to interpret some of the records.[2] The Department cannot be required to rely on verbal explanations or assertions in lieu of adequate records. State v. Mack, *supra*. The Taxpayer also has not argued, nor do I find, that Reg. 810-5-1-.464 is unreasonable.

Because the Taxpayer failed to keep records that substantially comply with Reg. 810-5-1-.464, the Department was authorized to attribute and assess 100 percent of the Taxpayer's total miles to Alabama.

I recognize that attributing 100 percent of the Taxpayer's total miles to Alabama is harsh, and perhaps the Department could have attributed a lesser amount

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[2]The report by Examiner Hanks, Dept. Ex. 2, reads in part - "This mileage information was provided only for those trucks whose drivers recorded odometer reading. This was approximately one fourth of the total IRP registered trucks operating on any given day. Mr. Argo agreed that, in order to get the same (mileage) information on the other trucks, it would require one of his employees working with a state examiner to identify pick up and delivery points and to estimate miles between points."

to Alabama in recognition that the Taxpayer's vehicles unquestionably traveled some in Georgia. But the Department was within its discretion in assessing 100 percent to Alabama. That decision is also supported by Shellcast, where the Supreme Court affirmed the Department's decision to tax all services, even though some were "unquestionably exempt." "Where there are no proper entries on the records . . ., the taxpayer must suffer the penalty of noncompliance . . . ." State v. T.R. Miller Co., 130 So.2d 185, 190 (1961).

The final assessment is affirmed. Judgment is entered against the Taxpayer for $7,800.94, plus applicable interest.

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

Entered June 20, 1997.

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BILL THOMPSON
Chief Administrative Law Judge