

J.P.-S FINISHING PRODUCTS
1551 Highland Avenue
Montgomery, AL 36104-4771,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 98-338

FINAL ORDER

The Revenue Department assessed sales tax against Linda S. Bartels (ATaxpayer@), d/b/a J.P.-s Finishing Products, for December 1992 through November 1995. 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 June 7, 2000. Jim Sizemore represented the Taxpayer. Assistant Counsel Wade Hope represented the Department.

ISSUES

This case involves two issues:

- (1) Did the Department timely file its Answer as required by Code of Ala. 1975, ' 40-2A-9(c); and,
- (2) Did the Department correctly assess the Taxpayer for the additional tax and interest included in the final assessment.

FACTS

The Taxpayer sells paints, thinners, sandpaper, knobs, hinges, etc. to craft shops, antique shops, upholstery shops, and similar businesses. The Taxpayer obtained Alabama sales tax numbers from many of her customers, and consequently sold products to those customers tax-free at wholesale.

The Department audited the Taxpayer and determined that some of her tax-free sales should have been taxed because the customers consumed the items for their own personal use. The Department assessed the Taxpayer accordingly.

The Taxpayer appealed the final assessment in issue to the Administrative Law Division on July 14, 1998, within the 30 days required by Code of Ala. 1975, ' 40-2A-7(b)(5)a. The Administrative Law Division notified the Legal Division of the appeal on July 16, 1998. The Legal Division requested additional time to file its Answer on August 12, 1998. The Administrative Law Division granted the Legal Division an additional 60 days to file its Answer by Order dated August 13, 1998. The Legal Division filed its Answer on March 3, 2000.

ANALYSIS

Issue (1) - Did the Department timely file its Answer?

The Revenue Department is required to file an Answer with the Administrative Law Division within 30 days from being notified of an appeal. A 60 day extension may be granted, giving the Department a combined 90 day Answer period. Code of Ala. 1975, ' 40-2A-9(c).

The Administrative Law Division notified the Legal Division of this appeal in July 1998. A 60 day extension to file the Answer was granted in August 1998. However, the Answer was not filed until March 2000. The Department thus failed to file its Answer within the required 90 days. Consequently, the final assessment in issue is dismissed for the reasons explained in Walter W. Muncaster v. State of Alabama, S. 98-273 & S. 98-408 (Admin. Law Div. 6/16/00); State of Alabama v. Sungard Business Systems, Inc., U. 94-310

(Admin. Law Div. 1/10/95); State of Alabama v. Bishop-Parker Furniture Co., Inc., S. 93-252 (Admin. Law Div. 3/31/94).

Issue (2) - Was the final assessment correctly computed?

This issue is pretermitted by the holding in Issue (1) above. The Taxpayer should note, however, that she cannot sell tax-free to a customer simply because the customer has a sales tax number. Rather, she is required to know the general nature of her customer's business. If a customer purchases a product that it both resells and also consumes for personal use, the Taxpayer can sell the product to the customer tax-free. The customer is then required to report as taxable those items withdrawn from inventory and used for personal consumption. Code of Ala. 1975, ' 40-23-1(a)(10). If the customer purchases a product for personal use only, the Taxpayer must charge and collect sales tax from the customer, even though the customer has a sales tax number.

Although Alabama law does not require any particular type of record keeping, it would be advisable for the Taxpayer to confirm and note on all invoices that the customer is in the business of reselling the item or items purchased from the Taxpayer. If the customer is not in the business of reselling the item or items, the Taxpayer may be liable for the sales tax that should have been collected.

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

Entered August 1, 2000.

BILL THOMPSON
Chief Administrative Law Judge