

SAND MOUNTAIN CORN MAZE LLC §
8420 COX GAP ROAD §
BOAZ, AL 35956-3054, §

Taxpayer, §

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
ALABAMA TAX TRIBUNAL

DOCKET NO. S. 16-158

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed Sand Mountain Corn Maze LLC (“Taxpayer”) for State and local sales tax for October 2011 through January 2015. The Taxpayer appealed to the Tax Tribunal pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on July 28, 2016. The Taxpayer’s owners, Wade and Donna Cahela, attended the hearing. Assistant Counsel Ralph Clements represented the Revenue Department.

The Taxpayer operates a place of amusement in Boaz, Alabama. The business includes a corn maze, a small train, see-saws, swings, and various other playground items. It also owns a pumpkin patch, and sells tangible personal property in a store at the location.

The Taxpayer is open during week days and on weekends. The business failed to collect and remit sales tax during the subject years. The Department audited the Taxpayer and assessed it for sales tax based on the gross proceeds from its retail sales, and also on the gross receipts from its amusement business.¹

¹ The Taxpayer purchased the tangible personal property it sold to its customers from retail businesses in the area. The Department examiners allowed the Taxpayer a credit for the sales tax it paid on those purchases.

The owners concede that they owe sales tax on their amusement gross receipts when the facility was open to the public on weekends and after 4:00 p.m. on weekdays. They argue, however, that local schools regularly brought young school children on trips to their facility during the audit period. According to the owners, the schools paid five or six dollars per child for the children to ride on a wagon to their pumpkin patch, pick out a pumpkin, and return on the wagon with the pumpkin. They claim that they were selling the pumpkins to the schools, and that they believed such sales were exempt from sales tax.

The owners testified that the five or six dollar charge is for the pumpkins taken by the children, and that if a child does not want a pumpkin, they can ride in the wagon to the pumpkin patch and back free of charge. They also explained that they “go through” about 10,000 pumpkins in a year. They raise from 15 to 25 percent of the pumpkins, and buy the rest from a local farmer.

The evidence shows that the Taxpayer is selling the pumpkins for the five or six dollars charged by the Taxpayer. But while the Taxpayer is paid for the pumpkins by check from the schools, the owners testified that in all cases the schools collected the money for the pumpkins from the children’s parents. The Taxpayer is thus selling the pumpkins to the children’s parents, and not to the exempt schools.² Substance must govern over form in tax matters. *Sizemore v. Franco Dist. Co., Inc.*, 594 So.2d 143 (Ala. Civ. App. 1991); *Kirkland v. State*, 529 So.2d 1036 (Ala. Civ. App. 1988).

² Sales to any county, city, and independent school boards and to any county, municipal, and State educational institutions are specifically exempted from Alabama sales tax. Code of Ala. 1975, §40-23-4(a)(15).

There is, however, also a sales tax exemption for the sale of fruit or other agricultural products by the person or corporation that planted, cultivated, and harvested such fruit or agricultural products. Code of Ala. 1975, §40-23-4(a)(44). As discussed, the Taxpayer's owners testified that they grew from 15 to 25 percent of the pumpkins they sold during the audit period. Assuming that the owners planted, cultivated, and harvested those pumpkins, the subsequent sales of the home grown pumpkins would have been exempt from sales tax.

To be allowed the exemption, however, the Taxpayer must have records showing how many home grown pumpkins they sold versus those purchased from the local farmer, and also the gross receipts derived from those home grown pumpkins. The owners should notify the Tribunal by September 16, 2016 if they have records showing the number of home grown pumpkins they sold during the period in issue, and the gross receipts derived from those sales. If so, they should also submit the records to the Tribunal by that date.

Finally, the Department examiners computed the Taxpayer's liability using the gross receipts amounts entered by the owners on a daily calendar. The Taxpayer's owners do not dispute the amounts, except concerning 2013. They explained that in that year, a third party sold food to the school children at their facility, and that they collected the money for the food with the amounts they charged for the pumpkins. They then wrote a check to the third party for the food portion of the receipts. The total amount, including the amount for the food, was apparently recorded on the daily calendars as total gross receipts for the business. The examiners thus included the total as taxable.

If the owners have records or other evidence showing the amount they paid to the third party food provider, they should submit the records/evidence to the Tribunal by the above September 16, 2016 date. Appropriate action will then be taken.

This Opinion and Preliminary Order is not an appealable Order. The Final Order, when entered, may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2B-2(m).

Entered August 17, 2016.

BILL THOMPSON
Chief Tax Tribunal Judge

bt:dr

cc: Mary Martin Mitchell, Esq.
Donna Cahela