

MARK A. & SUMMER R. OWENS,  
D/B/A/ SUMMER TIME MEATS  
2027 3<sup>RD</sup> STREET SW  
ATTALLA, AL 35954-1110

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA  
ALABAMA TAX TRIBUNAL

DOCKET NO. S. 16-347

### FINAL ORDER

The Revenue Department separately assessed Mark Owens and Summer Owens, d/b/a Summer Time Meats, for sales tax for October 2012 through December 2014. The Taxpayers appealed to the Tax Tribunal pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on May 26, 2016. CPA Gerald Pentecost represented the Taxpayers. Assistant Counsel Billy Young represented the Revenue Department.

The Department separately audited both Taxpayers for the period in issue because, according to the Department examiner, they were both in the business of selling meat products door to door during the period in issue. They failed, however, to file any sales tax returns during the period, and only Summer Owens had a valid Alabama sales tax license during a few months of the period.

The examiner requested purchase invoices and sales records from the Taxpayers. They provided only five purchase invoices from 2014, and no sales records for any of the audit period. They also provided a notebook which contained total monthly sales amounts, but no supporting documents as to how the total sales amounts were calculated.

The Taxpayers filed separate Schedule Cs relating to their sales with their joint 2012, 2013, and 2014 income tax returns. The Taxpayers' CPA provided those Schedules to the examiner, and also the Taxpayers' bank records.

The examiner reviewed the bank records and determined that she could not use those records because many entries/transactions could not be identified.

When I went to bank statements, there were (a) total of three bank statements during the audit. One was closed. One was open. They were strictly in his name. And there was a joint account. It appeared like her transactions were going through the joint account, and his transactions were going into the individual account. But there were a lot of transfers. There were a lot of notes like "loan from parents" and "injury settlement" and "insurance," no documentation to back it up. But with all these complications, I decided bank statements was not a good way to go.

(T. 22 – 23).

Because the Taxpayers failed to provide any sales records, only a few purchase invoices, and because the examiner could not use the Taxpayers' bank statements, she computed the Taxpayers' sales using the gross receipts or sales figures on their income tax Schedule Cs.

The examiner also had third party records showing the amount of the Taxpayers' tax-free food stamp sales. All of those sales were in Mark Owens' name. Summer Owens claimed, however, that some of her sales were also food-stamp sales. The examiner thus attributed the exempt food stamp sales between the Taxpayers based on the percentage of total annual sales reported on each Taxpayer's separate Schedule C. For example, Summer Owens reported approximately 35.271 percent of the couple's total Schedule C sales in 2012. The examiner thus attributed that percentage of exempt food stamp sales to Summer Owens.

The Taxpayers' representative concedes that the Taxpayers failed to keep adequate records. He also does not dispute the examiner's use of the Taxpayers' Schedule Cs to compute the sales tax due in the absence of such records. He argues, however, that amounts were included as income on the Schedule Cs that were not from sales by the Taxpayers. Specifically, he asserts that \$24,531 in gross receipts/sales on Mark's Schedule C in 2013 constituted a 1099 payment from Summer Owens to her husband for deliveries. The 1099 amount allegedly paid by Summer to Mark for deliveries in 2014 totaled \$67,519. The representative argues that those amounts should be deleted from Mark's 2013 and 2014 Schedule Cs, and the tax due reduced accordingly.

The representative also made the same or similar arguments to the examiner during the audit. The examiner's response to the contentions in the Department audit report reads as follows:

2012 – I would consider purchases reimbursed by Glo-Bull Meats as sales to Glo-Bull Meats by Mark Owens but I need Mark Owens to verify it was a wholesale sale by obtaining a copy of Glo-Bull Meats' sales tax certificate. Since I have no detail on the 1099 for how much was paid for delivery vs sales, I will still have to pick that amount up as taxable if Mark Owens cannot document the sales as wholesale. (Delivery fees are taxable when part of a taxable transaction.) Mr. Owens would still have \$29,000.00 gross receipts remaining after removing the amount on the 1099. He also reported cost of goods of \$84,472.00 and the 1099 shows he was paid a total of \$62,285.00 by Glo-Bull so there were more purchase made than reimbursed. I have not been given any documents to prove that any of the income on the 1099 was for delivery services. I have asked for documents to show if Mr. Owens was paid by the number of deliveries, the miles driven, when he was paid, how he was paid, etc.

2013 – Although I was given a copy of a 1099 issued to Mr. Owens by his wife Summer Owens and the payment was supposedly for delivery services only, I have not been given any documents to prove that any of the income on the 1099 was for delivery services. I have asked for documents to show if Mr. Owens was paid by the number of deliveries, the miles driven, when he was paid, owe he was paid, etc. There are no records to show how many

deliveries were made, if any, what rate he was paid, if he was paid by the number of deliveries or by the miles driven. I have no documentation that actual payments were made or deposited. Mr. Owens shows no income other than the amount on the 1099. There is a cost of goods amount of \$867.00 reported on the Schedule C so that would indicate that goods were sold and there were no sales records provided.

2014 – Although I was given a copy of a 1099 issued to Mr. Owens by his wife Summer Owens and the payment was supposedly for delivery services only, I have not been given any documents to prove that any of the income on the 1099 was for delivery services. I have asked for documents to show if Mr. Owens was paid by the number of deliveries, the miles driven, when he was paid, how he was paid, etc. I have no documentation that actual payments were made or deposited. Mr. Owens has \$1,000.00 of gross receipts above the amount on the 1099. There is also a cost of goods amount of \$24,242.00 reported on the Schedule C so that would indicate that goods were sold and there were no sales records provided.

If a taxpayer subject to sales tax fails to maintain adequate sales, purchase, and other records, as in these cases, the Department is authorized to use any reasonable records to compute or estimate the correct tax due. And having failed to keep adequate records, the taxpayer cannot thereafter object that the liability as estimated by the Department using the best information available is incorrect. *Sharon Adams v. State of Alabama*, Docket S. 14-339 (Admin. Law Div. 7/9/2014); *Ruby's LLC v. State of Alabama*, Docket S. 13-1121 (Admin. Law Div. 2/26/2014). The Department examiner thus correctly used the Taxpayers' income tax Schedule Cs as the best information available to compute the sales tax due.

As stated, the Taxpayers' representative argues that \$24,531 and \$67,519 should be removed from the "gross receipts or sales" amounts reported on line 1 of Mark Owens' Schedule C in 2013 and 2014, respectively, because those amounts were payments by Summer Owens to Mark for deliveries. The Taxpayers' post-hearing letter brief reads, in part, as follows:

However, the gross receipts reported in 2013 and 2014 do include payments for delivery services from Summertime Meats to Mark Owens. The tax preparer has informed me that these delivery services were included on the Schedule C gross sales for Mark Owens and I believe this is validated by the deduction for contract labor shown on Summertime Meats schedule C and the 1099s filed. If you wish to assess a sales tax on these delivery driver receipts, it is only fair to deduct these from Summertime Meats Schedule C gross sales as reporting these on both Schedule C's would be a "double counting" of the same receipts. Summertime Meats Schedule C is where all of the sales of Summertime Meats are reported.

While the Taxpayers' representative claims that the Taxpayers' tax preparer told him that payments for delivery services were included in Mark Summers' Schedule Cs, there is no evidence supporting that claim. As stated by the Department examiner – "I have asked for documents to show if Mr. Owens was paid by the number of deliveries, the miles driven, when he was paid, how much he was paid, etc. I have no documentation that actual payments were made or deposited."

It is presumed that if Summer Owens paid her husband for his delivery services, he was paid by check written on one of the Taxpayers' bank checking accounts. Those records from 2013 and 2014 should still be available from the Taxpayers' bank or banks. The income amounts reported on the Schedule Cs also had to be based on some documentation, and if the delivery fees were in fact paid, the Taxpayers' tax preparer presumably saw documentation of the exact amounts that he or she included on the Schedule Cs in each year. None of that information was presented by the Taxpayers before, at, or after the May 26 hearing. The Taxpayers' tax preparer also did not appear and testify at the hearing.

The fact that 1099s were issued showing that Summer Owens and Summertime Meats paid Mark nonemployee compensation of \$24,531 and \$67,519 in 2013 and 2014,

respectively, does not prove that the amounts were actually paid. To begin, the 2013 1099 is handwritten, and there is also no evidence who prepared the documents. Again, without canceled checks or other evidence that the amounts were paid, the amounts cannot be removed from the taxable sales on the Schedule Cs.

In summary, without evidence that the Schedule Cs include nontaxable receipts, the final assessments in issue must be affirmed. Judgment is entered against Summer Owens for \$5,325.73 and against Mark Owens for \$4,631.92. Additional interest is also due from the date the final assessments were entered, February 8, 2016.

If the Taxpayers have proof that the Schedule Cs include nontaxable income derived from Mark Summers' delivery services, they may apply for a rehearing within 15 days and present the evidence. They may also apply for a rehearing and have the individual that prepared the 1099s testify under oath concerning the inclusion of the nontaxable receipts on the 1099s. Otherwise, this Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2B-2(m).

Entered November 2, 2016.

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BILL THOMPSON  
Chief Tax Tribunal Judge

bt:dr

cc: Margaret Johnson McNeill, Esq.  
Gerald G. Pentecost, Jr., CPA