

CAMP HILL QUICK SHOP, INC. §  
22132 SEN CLAUDE PEPPER DRIVE §  
CAMP HILL, AL 36850-3642, §

Taxpayer, §

v. §

STATE OF ALABAMA §  
DEPARTMENT OF REVENUE. §

STATE OF ALABAMA  
ALABAMA TAX TRIBUNAL

DOCKET NO. S. 16-594

### **OPINION AND PRELIMINARY ORDER**

Camp Hill Quick Shop, Inc. (“Taxpayer”) appealed to the Tax Tribunal pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a., concerning a final assessment of State sales tax entered by the Revenue Department for April 2012 through May 2015. A hearing was conducted on August 31, 2017. The owner’s husband, Mr. Miah, and his accountant, Yoman Kim, attended the hearing. Assistant Counsel Mary Martin Mitchell represented the Department.

The Taxpayer operated a convenience store/gas station in Camp Hill, Alabama during the period in issue. The Revenue Department audited the Taxpayer for sales tax and requested the Taxpayer’s cash register tapes, purchase invoices, and other relevant sales records. The Taxpayer provided some bank and credit card statements, but no cash register tapes or any other sales or purchase records.

Because the Taxpayer failed to provide any cash register tapes or other adequate records, the Department examiner conducted a purchase mark-up audit. He obtained purchase records from some of the Taxpayer’s major vendors. He used the Taxpayer’s profit and loss schedules to determine the Taxpayer’s purchases when he was unable to obtain purchase records from various vendors. He then applied the IRS statistical mark-up of 1.35 percent to the Taxpayer’s total purchases to determine the Taxpayer’s total retail

sales during the audit period.

The Taxpayer had reported total sales of \$1,070,830.10 during the audit period. The audit revealed that the Taxpayer's wholesale purchases during the period totaled \$1,592,670.66. Wholesale purchases thus exceeded reported retail sales by \$458,281.24.

The Taxpayer argues that the average IRS 1.35 percent mark-up should not be applied to the store's beer, wine, and cigarette sales because the mark-up on those items was much less. It also contends (1) that it purchased approximately \$25,000 in supplies from Sysco Central Alabama during the audit period that it used and consumed and did not resell, and (2) that two percent of the grocery items purchased from W.L. Petrey Wholesale and Twin City Wholesale were not sold or were written off as unsellable.

As indicated, the Department examiner determined that the Taxpayer's sales and purchase records were incomplete, and thus insufficient to accurately compute the Taxpayer's liability for the period. He consequently computed the Taxpayer's liability using a purchase mark-up audit.

Simply stated, a retailer's sales tax liability is computed through a purchase mark-up audit by determining the retailer's wholesale purchases, and then applying a reasonable percentage retail mark-up to determine the retailer's estimated retail sales. The sales tax due is computed on those estimated sales, and a credit for sales tax previously reported and paid is then allowed to arrive at the additional sales tax due.

In this case, the Department examiner followed the above procedures by first obtaining the Taxpayer's purchase information for the audit period from his vendors. He appropriately used the Taxpayer's profit and loss statements when he was unable to obtain records from some of the Taxpayer's vendors. The examiner then applied the standard

IRS retail mark-up of 1.35 percent applicable to convenience stores/gas stations to arrive at the Taxpayer's estimated retail sales. He applied the four percent State sales tax rate to determine the total tax due. He then allowed a credit for sales tax previously paid to determine the additional tax due. A five percent negligence penalty was also applied because the Taxpayer had failed to keep adequate records during the period.

All retailers subject to Alabama sales tax are statutorily required to keep complete accurate sales, purchase, and other records from which their correct sales tax liability can be computed. Code of Ala. 1975, §§40-2A-7(a)(1) and 40-23-9. A retailer's duty to keep sales records is straightforward and simple. The retailer must record all sales on a cash register z-tape and/or on customer invoices or receipts, which may then be compiled onto a monthly sales journal. It is commonly understood that such records must be maintained to allow the Department to verify that the correct amount of sales tax has been reported and paid.

The Taxpayer in this case failed to provide complete records. In such cases, the Department is authorized to compute a taxpayer's correct liability using the most accurate and complete information obtainable. Code of Ala. 1975, §40-2A-7(b)(1)a. The Department can also use any reasonable method to compute the liability, and the taxpayer, having failed in the duty to keep good records, cannot later complain that the records and/or method used by the Department is improper or does not reach a correct result. *Jones v. CIR*, 903 F.3d 1301 (10th Cir. 1990); *State v. Ludlum*, 384 So.2d 1089 (Ala. Civ. App.), cert. denied, 384 So.2d 1094 (Ala. 1980) (A taxpayer must keep records showing the business transacted, and if the taxpayer fails to keep such records, the taxpayer must suffer the penalty for noncompliance). The Department examiner thus properly conducted

a purchase mark-up audit to compute the Taxpayer's liability for the subject period.

The purchase mark-up audit is a simple, oft-used Department method of determining a taxpayer's sales tax liability when the taxpayer fails to keep accurate sales records. See generally, *GHF, Inc. v. State of Alabama*, S. 09-1221 (Admin. Law Div. 8/10/10); *Thomas v. State of Alabama*, S. 10-217 (Admin. Law Div. O.P.O. 5/18/10); *Alsedeh v. State of Alabama*, S. 03-549 (Admin. Law Div. 11/3/04).

Because the Taxpayer in this case failed to maintain adequate records from which its sales could be accurately computed or verified, the Department examiner correctly conducted a purchase mark-up audit to reasonably compute the Taxpayer's liability for the audit period. The tax due as computed by the audit is by its nature an estimate, but the examiner of necessity estimated the Taxpayer's liability because the Taxpayer failed to maintain adequate records. As discussed, because the Taxpayer failed to maintain good records, as required by Alabama law, it cannot now complain that the Department's computations must be rejected as inexact estimates.

Notwithstanding the above, the Taxpayer presented credible evidence that some of his purchases from Sysco were used at the business and not resold. The Taxpayer estimated that "about \$25,000" was not resold. Under the circumstances, \$12,500 should be removed from the Sysco purchases.

The Taxpayer also presented evidence that two percent of the purchases from Adams Beverages and Premium Beverage Company were not resold. The total purchases from those two wholesalers were \$445,133.79 and \$101,475.55, respectively. Two percent of those purchases should also be deducted, along with the \$12,500 Sysco adjustment,

and the tax due should be recomputed accordingly. The remaining audit findings are affirmed.

The Department should recompute the Taxpayer's liability and notify the Tribunal of the adjusted amount due. A Final Order will then be entered in the case.

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 Ala. Code § 40-2B-2(m).

Entered September 7, 2017.

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BILL THOMPSON  
Pro Tempore Tax Tribunal Judge

bt:dr

cc: Mary Martin Mitchell, Esq.  
Mr. Miah