

ALABAMA TAX TRIBUNAL

RIKKI D. PICKETT d/b/a AMERICAN §
RUST MARKET, §
Taxpayer, § DOCKET NO. S. 19-236-JP
v. §
STATE OF ALABAMA §
DEPARTMENT OF REVENUE. §

FINAL ORDER

The Alabama Department of Revenue issued a final assessment of sales tax against the Taxpayer for \$2,634.55 for the periods of October 2017 through May 2018. The tax portion of the assessment was exactly \$2,000. The Taxpayer appealed to the Alabama Tax Tribunal (which is a separate state agency from the Alabama Department of Revenue) and stated that she never started her business as she had planned and that “I never opened or sold any items.”

In its Answer, the Revenue Department stated that the Taxpayer had not filed returns and that “[e]stimated tax liabilities were entered by the Department’s Collections Division.” But the Revenue Department did not explain why sales tax liabilities had been estimated by its Collections Division instead of its Sales Tax Division. Nor did the Revenue Department elaborate on or even mention the information relied upon in coming to the \$2,000 estimated amount.

The Revenue Department also stated as follows:

While the Taxpayer states in the appeal no sales were made by the business, the Taxpayer does not state that no tax exempted purchases were made using the sales tax resale certificate. Any such purchases could be subject to sales/use tax.

The Revenue Department's Answer was completely lacking any information that would suggest that its assessment has any evidentiary basis or foundation. Instead, the Answer merely speculated that tax-exempt purchases, which the Revenue Department does not even allege were made, *could* be subject to a sales tax or a use tax (which apparently has not even been assessed).

The law is clear that an assessment of tax must be based on a minimum evidentiary foundation. See, e.g., *Frontier Amusements, Inc. v. Alabama Department of Revenue*, Admin. Law Div., No. S. 10-947 (Fourth Preliminary Order Setting Hearing, November 30, 2011), citing *U.S. v. Janis*, 428 U.S. 433 (1976).

The Revenue Department was directed to amend its Answer to state whether it has an evidentiary basis for its assessment against the Taxpayer and, if so, exactly what that basis is. A copy of the Revenue Department's response is enclosed with the Taxpayer's copy of this Order.

The Revenue Department states that the final assessment should be voided. Judgment is entered accordingly.

This Final Order may be appealed to circuit court within 30 days, pursuant to Ala. Code § 40-2B-2(m).

Entered May 7, 2019.

/s/ Jeff Patterson
JEFF PATTERSON
Chief Judge
Alabama Tax Tribunal

jp:dr

cc: Rikki D. Pickett (w/enc.)
Margaret Johnson McNeill, Esq.