

## ALABAMA TAX TRIBUNAL

PHUOC TU & NU HA,	§	
Taxpayers,	§	DOCKET NO. INC. 15-1785-JP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

### OPINION AND PRELIMINARY ORDER

This appeal involves final assessments of individual income tax for years 2010, 2011, and 2012, entered by the Alabama Department of Revenue against Mr. Tu and Mrs. Ha jointly (“Taxpayers”). The final assessment for 2010 totaled \$77,235.54. The final assessment for 2011 totaled \$104,485.78. And the final assessment for 2012 totaled \$125,237.82.

After a review of additional records provided by the Taxpayers, the Revenue Department agreed that the final assessments should be reduced to \$18,833.49 for 2010, \$36,682.74 for 2011, and \$28,888.62 for 2012. Subsequent submissions by the Taxpayers and reviews by the Revenue Department resulted in no further adjustments to the amounts claimed due pursuant to the assessments.

Therefore, a hearing was conducted in Mobile, Alabama, in February 2018. All parties were represented by counsel. Mr. Tu testified through an interpreter, and Ms. Jo McArthur also testified for the Taxpayers. The Revenue Department called no witnesses.

During the hearing, it was stated by counsel that the only remaining issue concerned Mr. Tu’s cashing of payroll checks in his store and the depositing of those checks into a cash account at Regions Bank. The other issue, which involved wire transfers of money,

was resolved by the Taxpayers' submission of additional records to the Revenue Department. That submission and review led to the Revenue Department's agreement that the final assessments should be reduced, as mentioned previously.

Mr. Tu operates a market in Bayou La Batre that sells Asian specialty foods. Although the store sells some staple goods, it is not a convenience store. Mr. Tu operates the business as a sole proprietorship.

The record evidence showed that, during the years in issue, Mr. Tu maintained two business accounts at Regions Bank. One was a cash account and the other was an operating account. Frequently, people would bring their payroll checks to Mr. Tu's store for cashing. In anticipation of these regular occurrences, Mr. Tu would write checks for cash from the Regions cash account so that he would have sufficient amounts on hand to cash his customers' payroll checks. Sometimes, customers used some of the money from their cashed checks to purchase store items, but customers never spent their entire check amounts on such purchases.

Mr. Tu testified that amounts received from customers pursuant to a sale, including sales involving cash from a payroll check, were deposited into the operating account. And those sales, even the ones involving cash from a payroll check, were reported on his sales-tax returns. He then used his sales-tax returns to prepare his income-tax returns.

Mr. Tu also testified that, after cashing customers' checks, he deposited those checks into the cash account. Those deposits replenished the account out of which Mr. Tu had taken cash for the purpose of cashing payroll checks.

The Taxpayers introduced Exhibit 1 during the hearing, which was a compilation of many of the cash-account bank statements for the years in issue. The statement for

February 2012 showed that Mr. Tu wrote checks for cash totaling \$136,000. The statement also showed that deposits were made into the cash account throughout that month totaling nearly \$130,000. Almost all of the deposits appeared to be payroll checks.

Mr. Tu testified that the activity in other months within the audit period followed the same pattern; *i.e.*, that he withdrew cash for the purpose of cashing customer checks and that deposits into the cash account were from third-party checks that had been cashed by Mr. Tu for his customers. The bank statements contained within Taxpayers' Exhibit 1 confirm Mr. Tu's testimony.

As stated, the Revenue Department did not call any witnesses at the hearing, nor did it introduce any evidence. Instead, it referenced Ala. Code § 40-2A-7 generally as to a taxpayer's recordkeeping requirements and maintained its position that the Taxpayers had not provided sufficient information to the Revenue Department prior to the hearing to further adjust the Taxpayers' liabilities. However, the Revenue Department conceded during the hearing that the Taxpayer was cashing checks in his store. And the Revenue Department agreed that the cashing of a check for a customer without a sale being involved, so that the customer left the store with the full amount of the check, would not result in taxable income to the Taxpayers.

Based on the uncontroverted evidence, the Taxpayers have proven that the deposits into the Regions Bank cash account did not constitute taxable income, with two exceptions. First, Mr. Tu testified that he charged a one-percent fee for cashing customers' checks. He also testified that he deposited the fee into the cash account. Those fees constituted taxable income. According to the Taxpayers' filing pursuant to the Tax Tribunal's Thirteenth Preliminary Order, the cash account had total deposits of

\$1,062,883.41 for 2010; \$1,235,088.51 for 2011; and \$1,775,766.52 for 2012. Second, Taxpayers' Exhibit 1 showed that six checks that were deposited into the cash account were payable to the Taxpayers' business and not to third parties. For the year 2010, the checks were #1125 from Bayou Star for \$1,460.94 dated June 17, 2010; and #276 from Phali Symoungphone for \$18.38 dated August 18, 2008. For 2011, the checks were #3605 from Trawler Master Jeffrey, Inc., for \$999 dated January 18, 2011; #4565 from Captain Eric III for \$425 dated September 19, 2011; #3651 from Leona Kay Ly for \$95.63 dated September 19, 2011; and #682 from My Ly Nguyen for \$200 dated November 20, 2011. The Taxpayers did not show that these amounts were nontaxable.

Therefore, the Revenue Department is directed to recalculate the final assessments to include only the one-percent fees (except for fees on the six specified checks) and the six specified check amounts in taxable income for the appropriate years in issue. Applicable penalties and interest also should be included in the recalculations. The Revenue Department is directed to provide its recalculations for each year to the Tax Tribunal no later than **June 21, 2019**. A Final Order will then be entered.

Entered May 14, 2019.

*/s/ Jeff Patterson*

JEFF PATTERSON  
Chief Judge  
Alabama Tax Tribunal

jp:dr

cc: John J. Crowley, Esq.  
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