

**ALABAMA TAX TRIBUNAL**

MAD INDIAN, INC.,	§	
Taxpayer,	§	DOCKET NO. S. 18-149-LP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

**FINAL ORDER**

This appeal involves disputed final assessments of State and local sales tax for July 2013 through June 2016. A hearing was conducted on July 9, 2018, before Judge Christy Edwards. Doug Hill represented the Taxpayer. Assistant Counsel Hilary Y. Parks represented the Revenue Department. Following the hearing, the parties submitted additional filings.

The Taxpayer operated a convenience store in Randolph County, Alabama, during the period in issue, where it sold common convenience store items and gasoline. Additionally, the Taxpayer sold liquor.

The Department audited the Taxpayer for sales tax for the period in issue and requested records from which the Taxpayer's sales tax liability could be computed and verified. The Taxpayer submitted income tax returns for 2013 and 2014, partial bank statements for those years, one invoice from a vendor, and a general ledger printout from the Taxpayer's Quick Books system. It did not submit any cash register z-tapes or any other sales records.

The examiner determined that the Taxpayer's records were insufficient to allow the examiner to determine the Taxpayer's sales tax liability for the audit period. Using purchase invoices provided by some of the Taxpayer's vendors and a ledger of vendor purchases provided by the Taxpayer, the

examiner determined that Taxpayer's purchases exceeded the total taxable sales reported by the Taxpayer in the audit period. Consequently, the auditor performed a purchase mark-up audit to arrive at the Taxpayer's estimated gross receipts.

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

In this case, the examiner determined the Taxpayer's wholesale purchases during the period using the ledger from the Taxpayer and purchase invoices obtained from the Taxpayer's vendors. The examiner also obtained information regarding EBT sales and removed those sales from the taxable measure. The Taxpayer challenged the amounts provided by some vendors but provided no evidence of lower amounts actually paid. The Taxpayer also argued that the taxable measure does not account for theft. It claims an employee stole many items and possibly cash from the store. Again, the Taxpayer provided no records to prove this fact. The examiner then applied the standard IRS Statistical Mark-Up of 35% applicable to convenience stores to arrive at the Taxpayer's estimated retail sales. She then applied the State sales tax rate and the local tax rate to determine the total tax due. She allowed a credit for sales tax previously paid to determine the additional tax due. The negligence penalty was applied because the Taxpayer failed to keep adequate records during the period.

The Taxpayer claims that the Revenue Department should not have used the 35% IRS mark-up. The Department responded that it used the best available information and employed a reasonable audit method to compute the Taxpayer's remaining tax liability. The Department argues that the

purchase mark-up audit method is a well-recognized, reasonable method used by the Department where a Taxpayer fails to keep adequate records whereby his tax liability can be ascertained, and asserts that the courts have repeatedly upheld this methodology in appeals based on similar facts. The Department is correct.

All retailers subject to Alabama sales tax and local tax are statutorily required to keep complete and accurate sales, purchase, and other records from which their correct sales tax liability can be computed. Ala. Code §§ 40-2A-7(a)(1) and 40-23-9. A retailer's duty to keep sales records is straightforward and simple. 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.

It is undisputed that the Taxpayer in this case failed to provide complete sales records. In such cases, the Department is authorized to compute a taxpayer's actual tax liability using the most accurate and complete information obtainable. Ala. Code § 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.2d 1301 (10th Cir. 1990); *Alsedeh v. State of Alabama*, S. 03-549 (Admin. Law Div. 11/3/04).

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, supra*. 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.

The Taxpayer may be correct that the Department's mark-up is higher than it actually was during the audit period, but the Taxpayer did not produce evidence of a lower mark-up percentage used. The Taxpayer did provide a letter from its beer vendor post-hearing. The vendor states the general practices regarding mark-up percentages of beer of its customers and applies those generalities to the Taxpayer. Unfortunately, the letter is insufficient to prove the mark-up percentage used by the Taxpayer. Furthermore, as stated by the Department in its post-hearing submission, the IRS mark-up percentage is an average; some items are sold above the percentage and some below. As discussed, because the Taxpayer failed to maintain good and accurate records, as required by Alabama law, it cannot now complain that the Department's computations must be rejected as inexact estimates.

The Department's audit was properly conducted using the best information available. The final assessments that are the subject of this appeal are accordingly affirmed. Judgment is entered against the Taxpayer for State and local tax, penalties, and interest of \$58,633.58 and \$23,096.15, respectively. Additional interest is also due from the date the final assessments were entered, December 18, 2017.

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

Entered June 10, 2019.

*/s/ Leslie H. Pitman*

LESLIE H. PITMAN

Associate Tax Tribunal Judge

lhp:dr

cc: B. Douglas Hill, Esq.  
Hilary Y. Parks, Esq.