

AUSTIN L. RAY
Dogwood Antiques
2010 Airport Blvd.
Mobile, AL 36606-1339,

Taxpayer,

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 03-271

FINAL ORDER

The Revenue Department assessed Austin L. Ray ("Taxpayer"), d/b/a Dogwood Antiques, for sales tax for June 1998 through May 2001. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on July 3, 2003 in Mobile, Alabama. The Taxpayer attended the hearing. Assistant Counsel Duncan Crow represented the Department.

The issue in this case is whether the Taxpayer is liable for sales tax on items he sold at auction.

The Taxpayer operates an antique shop in Mobile, Alabama. As a licensed auctioneer, he also periodically conducts estate auctions.

The Taxpayer correctly collected and remitted sales tax on the retail sales at his antique shop. He failed, however, to charge and collect sales tax on his auction sales.

The Department audited the Taxpayer and assessed him for sales tax on his auction sales. The Taxpayer subsequently provided records showing that some of his auction sales were to licensed dealers for resale. The Department deleted those sales from the audit, and assessed the Taxpayer for the balance due. The Taxpayer appealed.

The Taxpayer argues that he is not liable for sales tax on his auction sales because he does not take possession of the goods. I disagree.

An auctioneer sells on consignment. The amounts received for goods sold on consignment are specifically included in the definition of "gross proceeds of sale" subject to sales tax. Code of Ala. 1975, §40-23-1(a)(6). Whether an auctioneer takes actual physical possession of the goods sold on consignment is irrelevant. Rather, an auctioneer is liable for sales tax on goods sold on consignment if he receives payment for the property sold, issues a bill of sale or invoice for the property, and then pays the owner the net proceeds from the auction, i.e. gross proceeds less auction and other fees. See generally, Dept. Reg. 810-6-1-.05. The Taxpayer operated as indicated above during the audit period. Consequently, he was liable for sales tax on his auction sales.

The Taxpayer provided the Department with additional records at the July 3 hearing. The Department has notified the Administrative Law Division that based on those records, the Taxpayer's liability should be reduced to \$9,565.81, including interest through July 31, 2003. The final assessment, as adjusted, is affirmed. Judgment is entered against the Taxpayer for \$9,565.81.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered July 22, 2003.