

MOSELEY'S ONE STOP, INC. §  
HIGHWAY 280, P.O. BOX 306 §  
Kellyton, AL 35089-0306, §

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

Taxpayer, §

DOCKET NO. S. 03-316

v. §

STATE OF ALABAMA §  
DEPARTMENT OF REVENUE.

### **FINAL ORDER**

The Revenue Department assessed Moseley's One Stop, Inc. ("Taxpayer") for State sales tax for August 1999 through May 2002, and Coosa County sales tax for June 1999 through May 2002. 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 15, 2003. David Moseley represented the Taxpayer at the hearing. Assistant Counsel Wade Hope represented the Department.

The issue in this case is whether the Department correctly estimated the Taxpayer's State and Coosa County sales tax liabilities for the subject period using an indirect purchase mark-up audit.

The Taxpayer operates a convenience store in Kellyton, Alabama at which it sells beer, soft drinks, food, and miscellaneous items. The Department audited the Taxpayer for the subject periods and requested its sales and purchase records. The Taxpayer provided a few purchase invoices, sales journals, and bank statements with canceled checks. It failed, however, to provide any cash register tapes, and most sales invoices were not available. The Department examiner concluded that the Taxpayer had provided insufficient records to do a direct audit. He consequently computed the Taxpayer's liability using a purchase mark-up audit.

In a purchase mark-up audit, a retailer's sales in the audit period are determined by taking the retailer's beginning inventory, adding all wholesale purchases by the retailer during the period, and then subtracting ending inventory. An average mark-up is added to the wholesale cost of the merchandise sold to arrive at the estimated retail sales for the period. The applicable tax rate or rates are then applied, and a credit for tax previously paid is allowed to arrive at the additional tax due.

In this case, the examiner obtained the Taxpayer's beer purchases during the audit period from Coosa County. He also obtained monthly purchase information from three of the Taxpayer's primary vendors, Twin City Wholesale, Alabama Food Group, and W.L. Petrey Wholesale. He estimated purchases from minor vendors based on canceled checks and retained invoices provided by the Taxpayer. The Taxpayer's total purchases as reflected by the above information greatly exceeded its reported sales during the audit period.

IRS information indicated that the average retail mark-up for a convenience store in a rural area was 34 percent. The examiner applied only a 20 percent mark-up, however, because he thought that amount would be fair to the Taxpayer. He multiplied the taxable sales by the applicable State and Coosa County sales tax rates to arrive at total tax due. He next allowed a credit for tax previously paid to arrive at additional tax due. A 5 percent negligence penalty, plus statutory interest, was added to arrive at the total amounts due as reflected on the final assessments in issue.

All taxpayers subject to sales tax are required to keep complete and accurate records from which the Department can accurately determine the taxpayer's correct liability. Code of Ala. 1975, §§40-2A-7(a)(1) and 40-23-9; *State v. Mack*, 411 So.2d 799

(Ala.Civ.App. 1982). If a taxpayer fails to keep adequate records, the Department can use any reasonable method to compute the taxpayer's liability. The Taxpayer cannot later complain that the liability so computed by the Department is inexact. *Jones v. C.I.R.*, 903 F.3d 1301 (10<sup>th</sup> Cir. 1990).

As discussed, the Department estimated the Taxpayer's liability in this case using a purchase mark-up audit. A purchase mark-up audit is an accepted method of computing a taxpayer's liability in the absence of adequate records. See generally, *Pelican Pub & Raw Bar, LLC v. State of Alabama*, S. 00-286 (Admin. Law Div. 12/15/00); *Joey C. Moore v. State of Alabama*, S. 99-126 (Admin. Law Div. 8/19/99); *Robert Earl Lee v. State of Alabama*, S. 98-179 (Admin. Law Div. 6/28/99); *Red Brahma Club, Inc. v. State of Alabama*, S. 92-171 (Admin. Law Div. 4/7/95); and *Wrangler Lounge v. State of Alabama*, S. 85-171 (Admin. Law Div. 7/16/86).

The Taxpayer's owner complained generally at the July 15 hearing that his business could not have made the volume of sales indicated by the Department's audit. However, the audit was properly conducted and is reasonable. The Taxpayer's beer sales were based on the actual beer sales reported by the Taxpayer to Coosa County during the subject months. The examiner also obtained purchase information from the Taxpayer's three major vendors establishing the amounts purchased from those vendors. The purchases from the Taxpayer's minor vendors were admittedly estimated, but those estimates were based on information provided by the Taxpayer. The Department did agree to adjust the Buffalo Rock information to reflect monthly purchases as opposed to weekly purchases. That adjustment reduced the Taxpayer's liability by \$2,016.55.

The Taxpayer also benefited from the examiner's decision to use a 20 percent mark-up instead of the 34 percent recommended by the IRS. Under the circumstances, the Department's audit is reasonable, and is affirmed.

The Department has notified the Administrative Law Division that the adjusted State sales tax due is \$12,924.88, and the adjusted Coosa County sales tax due is \$3,229.59, both with interest calculated through July 31, 2003. The final assessments are reduced, and judgment is entered accordingly.

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

Entered July 28, 2003.