

HUNTSVILLE MADISON COUNTY
BOTANICAL GARDEN SOCIETY
4747 Bob Wallace Avenue SW
Huntsville, AL 35805-3390,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 03-656

FINAL ORDER

The Revenue Department assessed Huntsville Madison County Botanical Garden Society (“Taxpayer”) for State sales tax for September 1999 through August 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 December 15, 2003. Paula Steigerwald, Harvey Colton, and CPA Jerry Mercer represented the Taxpayer. Assistant Counsel J.R. Gaines represented the Department.

The Taxpayer operates a botanical garden in Huntsville, Alabama. The Taxpayer is an independent, self-funded 501(c)(3) organization, although it does receive some money from the City of Huntsville. The majority of its funding comes from donations, receipts from a gift shop and the sale of concessions at the gardens, and from membership fees and admission fees charged for various programs, tours, and other events conducted at the gardens. The Taxpayer has a permanent staff of employees, but largely depends on numerous volunteers that actively contribute to the operation of the gardens.

The Taxpayer began operating in the 1980’s, and has always collected and remitted sales tax on its gift shop and concession sales. The Department audited the Taxpayer and determined that the Taxpayer’s admission receipts were subject to the gross receipts

“sales” tax levied on public places of amusement at Code of Ala. 1975, §40-23-2(2).

The Department examiner initially taxed all of the Taxpayer’s membership fees and admission receipts. After further review, the examiner deleted from the audit those admissions paid by tax-exempt schools. The Taxpayer also determined what portion of its membership fees represented donations or were for non-admission services, i.e. the garden’s newsletter, membership discounts, etc. The examiner deleted that part of the non-admission-related membership fees from the audit. The Department subsequently assessed the Taxpayer for the three years in issue.¹ The Taxpayer appealed.

The Taxpayer concedes that its receipts were subject to the gross receipts sales tax, and consequently that it owes the tax in issue. It is grateful that the Department examiner worked with it to delete the various non-taxable admissions and fees from the audit. It contends, however, that if it is required to pay the \$60,000 plus in issue, it will be financially crippled and will be forced to reduce its paid staff and its services to the public.

I sympathize with the Taxpayer. It is a worthwhile civic organization that provides valuable educational and social services to its members and to the public at large. Unfortunately, it is not exempt from Alabama sales tax. The Revenue Department is under an affirmative duty to assess and collect all taxes due the State. Understandably, the Department cannot pick and choose which taxes to collect and which not to collect. It must fairly apply the tax law regardless of the taxpayer or the circumstances involved. The Department examiner did a good job in identifying and taxing only those receipts that were

¹ The Department could have assessed the Taxpayer for a six year period under the 25 percent “omission from taxable base” statute of limitations at Code of Ala. 1975, §40-2A-7(b)(2)b. Under the circumstances, however, the Department assessed the Taxpayer only under the general three year statute at Code of Ala. 1975, §40-2A-7(b)(2). The Department

subject to the gross receipts tax. And as indicated, the Department could have penalized the Taxpayer and assessed it for a six year period. It elected not to. Under the circumstances, the Department has done all it can under the law to help the Taxpayer.

The final assessment is affirmed. Judgment is entered against the Taxpayer for State sales tax and interest of \$60,053.91. Additional interest is also due from the date of entry of the final assessment, August 28, 2003. Copies of this Final Order are being forwarded to the Department's Collection Services Division and the Taxpayer Advocate with a strong recommendation that the Taxpayer be allowed to pay the back taxes due in installments pursuant to Code of Ala. 1975, §40-2A-4(b)(6).

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

Entered January 9, 2004.

also elected not to penalize the Taxpayer.