

RIVER FORKS IMPORTS, INC. §  
P.O. Box 63 §  
Geneva, AL 36340, §

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

Taxpayer, §

DOCKET NO. S. 04-678

v. §

STATE OF ALABAMA §  
DEPARTMENT OF REVENUE.

### **FINAL ORDER ON TAXPAYER'S APPLICATION FOR REHEARING**

The Revenue Department assessed the above Taxpayer for State, Geneva County, and City of Geneva sales tax for July 1999 through November 2001 in the amounts of \$73,686.31, \$50,758.60, and \$16,906.66, respectively. The Taxpayer appealed to the Administrative Law Division. A hearing was scheduled for November 16, 2004, but was canceled to allow the Department to review additional records submitted by the Taxpayer.

A Final Order was entered on August 9, 2005 reducing the final assessments to \$46,477.28, \$10,654.55, and \$31,963.54, respectively, with interest through August 18, 2004. The Taxpayer timely applied for a rehearing, which was conducted on October 5, 2005. The Taxpayer submitted additional records at the hearing.

The Department reviewed the additional records and further reduced the Taxpayer's State, Geneva County, and City of Geneva liabilities to \$44,938.74, \$30,958.13, and \$10,319.38, respectively, including interest through October 31, 2005. The Department also requested that the 50 percent fraud penalty be assessed because (1) an employee at the Taxpayer's business had encouraged a customer (the Department examiner) to falsely claim an exemption, and (2) the Taxpayer had submitted falsified documents to the examiner during her audit.

The Taxpayer responded by submitting additional documents and arguments. See, January 13, 2006 letter, with attachments, from Joy Thames. The Department responded to the additional documents by letter dated March 2, 2006. The Department claims that it has either deleted the exempt wholesale sales documented by the Taxpayer, or the exemptions were not properly documented and should not be allowed. It also again asserts that the 50 percent fraud penalty should be added.

Code of Ala. 1975, §40-2A-7(a)(1) requires all taxpayers to keep accurate books and records from which their correct tax liability can be determined. Code of Ala. 1975, §40-23-9 also requires that a retailer subject to sales tax must keep accurate records. That section specifies – “Any person selling both at wholesale and retail shall keep his books so as to show separately the gross proceeds of wholesale sales and the gross proceeds of retail sales. All sales shall be subject to tax in the absence of such separate records.” Department Reg. 810-6-1-.184 also puts the burden on the seller to know the general nature of the wholesale purchaser’s business, and that the purchaser is in the business of reselling the type of items being purchased. See generally, *Webster v. State of Alabama*, S. 03-165 (Admin. Law Div. 6/12/03) and *J.P.’s Finishing Products v. State of Alabama*, S. 98-338 (Admin. Law Div. 8/1/00).

The Department examiner visited the Taxpayer’s business while off-duty in the Summer of 2001. A sign at the business read “For Dealers Only.” The examiner told an employee at the business that she was not a dealer. The employee responded that she could still purchase items tax-free if she knew anyone with a sale tax number she could use. The examiner subsequently audited the Taxpayer beginning in late 2001.

It is understandable that given the above experience, the examiner was skeptical concerning the Taxpayer's exemption records. She accepted the Taxpayer's exemption documents during the audit if they appeared to be valid. However, she rejected many because they were suspect.

The Taxpayer submitted additional records after the examiner made her initial audit findings. The examiner reviewed the records and significantly reduced the Taxpayer's State and local liabilities. The Taxpayer then appealed to the Administrative Law Division.

As indicated, the Taxpayer submitted more records after appealing to the Administrative Law Division. The Department reviewed those records and again reduced the Taxpayer's liabilities. After a Final Order was entered for the reduced amounts due, the Taxpayer applied for a rehearing and again submitted additional records. The Department again reviewed those records and reduced the amounts due.

The Taxpayer continues to claim that many of her disallowed exempt sales were in fact sales for resale, and should be removed from the audit. The Department responded in its March 2, 2006 letter that all properly documented wholesale sales have been deleted. I must agree. The burden was on the Taxpayer to keep records sufficient to show that all claimed exempt sales were, in fact, sales for resale. Based on the evidence submitted, I cannot find that the Taxpayer has properly documented any additional sales as exempt. I also find that under the circumstances, the fraud penalty assessed by the Department is not warranted.

The State, Geneva County, and City of Geneva final assessments are adjusted to \$44,938.74, \$30,958.13, and \$10,319.38, respectively, per the Department's October 26, 2005 letter. Additional interest is also due from November 1, 2005. Judgment is entered

accordingly. The August 9, 2005 Final Order is voided.

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

Entered March 8, 2006.

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BILL THOMPSON  
Chief Administrative Law Judge