

PATRICK DOSS
d/b/a TOWN & COUNTRY
25931 U.S. HIGHWAY 31
JEMISON, AL 35085-7841,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§ STATE OF ALABAMA
DEPARTMENT OF REVENUE
§ ADMINISTRATIVE LAW DIVISION

§
DOCKET NO. S. 08-584

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

This appeal involves a final assessment of State sales tax for June 2007 through January 2008 entered against the above Taxpayer. A Final Order was entered on November 3, 2008 affirming the final assessment because the Taxpayer failed to comply with a Preliminary Order.

The Taxpayer timely applied for a rehearing. A hearing was conducted on January 8, 2009. The Taxpayer was notified of the hearing by certified mail, but failed to appear. The November 3, 2008 Final Order was affirmed on rehearing.

The Taxpayer timely applied for a second rehearing. A second hearing was conducted on February 26, 2009. The Taxpayer and his grandmother, Wanda Davis, attended the hearing. Assistant Counsel David Avery represented the Department.

In May 2007, the Department electronically received an application for a sales tax license in the Taxpayer's name, d/b/a Town & Country. The application indicated that the business was a gas station/convenience store. The Department issued a sales tax license in the Taxpayer's name, effective June 1, 2007.

The business failed to file any sales tax returns with the Department. A Department Collection Services Division agent called on the business on several

occasions in 2007 concerning the delinquent returns and tax due. The agent talked to the Taxpayer on one of those visits. The Taxpayer informed the agent that his wife, Jessie Doss, handled the store's taxes, and that he would have his wife call the agent the next week.

The wife never contacted the agent, and the business continued to fail to file returns. The Department consequently estimated the sales tax due for the months in issue and assessed the Taxpayer, as the sales tax licensee, for the estimated tax due, plus penalties and interest.

The Taxpayer testified at the February 26 hearing that his common law wife, Jessie Doss, owned and operated the store. Jessie had previously worked at the store when it was owned by another person before the period in issue. The Taxpayer claimed that he worked full-time at a machine shop in Calera, Alabama during the period in issue, and had nothing to do with the business.

The Taxpayer's grandmother owns the building in which the business was located. She testified at the February 26 hearing that when the prior business owner moved out, she rented the building to Jessie for \$800 a month, beginning in June 2007. She also testified that Jessie had applied for a sales tax license with the Department using her computer. She did not know at the time, however, that Jessie had applied for the license in the Taxpayer's name, not her own.

The Taxpayer testified that his wife ran the business, and that because he worked full-time at the machine shop in Calera, he had nothing to do with the business. He conceded that he was at the store on one occasion when the Department's agent came by, but explained that he had just gotten off work and came by to visit.

The Taxpayer testified further that he never knew that his wife had applied for the sales tax license using his name. He did not discover that fact until after the period in issue, when he found numerous past due notices from the Department. His wife had hidden the notices, and the Taxpayer did not discover the problem until after his wife left him and moved to South Alabama with another man.

The Taxpayer also discovered that his wife (now ex-wife) had borrowed money in his name, and had also set up an account in his name with Merritt Oil. Merritt Oil sued the Taxpayer and Jessie in Chilton County Circuit Court for the outstanding balance due on the account. Merritt Oil subsequently agreed to dismiss its claim against the Taxpayer.

The Taxpayer also testified that he has lost his job because of actions by his ex-wife. He has also lost his house because his ex-wife failed to pay the mortgage, even though he gave her the money to do so.

The evidence shows that the Taxpayer's ex-wife, not the Taxpayer, owned and operated the business in issue in this case. The ex-wife obtained the store's sales tax license, albeit in her then-husband's name, and she leased the building in which the business was located. The Taxpayer also worked full-time at another job and never worked at the store, as did his ex-wife. Importantly, Merritt Oil sued the Taxpayer and his ex-wife on the store's delinquent gas account, but subsequently dismissed the Taxpayer from the suit, presumably because it was convinced that the Taxpayer had nothing to do with the business. Under the circumstances, the Taxpayer's ex-wife, not the Taxpayer, is liable for the sales tax in issue.

The final assessment against the Taxpayer and the November 3, 2008 Final Order are voided. The Department should assess and collect the amount due from Jessie Doss, as the owner/operator of the business. I am sure the Taxpayer would be glad to help the Department locate his ex-wife.

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

Entered May 12, 2009.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: J. Wade Hope, Esq.
Patrick Doss
Joe Cowen
Mike Emfinger