

STEPHEN D. HUFFAKER
43780 OLD ROBINSON ROAD
BAY MINETTE, AL 36507,

§
§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. S. 08-991

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER

The Revenue Department assessed Stephen D. Huffaker (“Taxpayer”) for State sales tax for February 2003 through September 2006. 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 2, 2009. The Taxpayer and his representative, CPA Kenneth Wells, attended the hearing. Assistant Counsel Duncan Crow represented the Department.

The Taxpayer is in the mobile home repossession/sales business. The Department audited him for sales tax for February 2003 through September 2006. The Department examiner initially determined that the Taxpayer owed sales tax of \$13,953.82 because he had failed to collect and remit sales tax on his sales during the period. The Taxpayer presented additional records after the audit was completed, and the Department reduced the tax due to \$7,404.72. The Department subsequently assessed the Taxpayer for that amount, plus applicable interest.

The Taxpayer explained at the July 2 hearing that he sold the mobile homes during the period in issue as an agent for another company. He testified that he did not collect sales tax on his sales because he thought the other company was paying the sales tax due on the sales. He also stated that a Revenue Department agent told him in 2003 that he was not subject to sales tax, and that his sales tax account was accordingly being closed.

Finally, he asserted that during the latter part of the audit period, he was not charging sales tax because his customers were being instructed to subsequently pay sales tax at the county courthouse.

The Taxpayer was making taxable retail sales during the subject period, and thus was required to collect sales tax on those sales. The Taxpayer does not dispute that he should have collected sales tax, but argues that he should be relieved of liability because (1) a Department employee told him in 2003 that he was not liable for sales tax, and (2) all of his customers paid the appropriate sales tax at the county courthouse.

A Department employee did tell the Taxpayer in 2003 that his business was not subject to sales tax. The employee testified at the July 2 hearing, however, that his advice was based on how the Taxpayer told the employee that he conducted business. That is, either the Taxpayer did not fully explain to the examiner how the business was being operated, or the examiner misunderstood what the Taxpayer said. But in either case, the Taxpayer cannot be relieved of liability because Alabama's courts have consistently held that the Department cannot be estopped from correctly assessing tax based on erroneous advice given by a Department employee. *Community Action Agency of Huntsville, Madison County, Inc. v. State*, 406 So.2d 890 (Ala. 1981); *Boswell v. Abex Corp.*, 317 So.2d 317 (Ala. 1975).

The Taxpayer would be relieved of liability if his customers paid the full sales tax due at the county courthouse. The Taxpayer must, however, present evidence showing that the full tax due was paid. The Taxpayer presented additional evidence at the July 2 hearing showing that some of his customers had paid the tax due on the mobile homes.

The Department has notified the Administrative Law Division that it has accepted the

records submitted by the Taxpayer, and that the final assessment should be reduced to tax of \$3,481.42, plus interest of \$850.24 through July 31, 2009. The Taxpayer must be held liable for that amount because while he believes that all of his customers paid sales tax at the county courthouse, he concedes that he does not have records proving that the tax was paid. Interest is also required by statute, and cannot be waived. Code of Ala. 1975, §40-1-44.

The final assessment, as reduced, is affirmed. Judgment is entered against the Taxpayer for tax of \$3,481.42, and interest of \$850.24. Additional interest will also accrue if the full amount due is not paid by July 31, 2009.

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

Entered July 7, 2009.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Duncan R. Crow, Esq.
J. Kenneth Wells, Jr., CPA
Joe Cowen
Mike Emfinger