

BAMACO BINGO LLC,  
AND ITS MEMBERS,  
BEVERLY R. MITCHELL AND,  
ROBERT M. MITCHELL  
2000 INTERSTATE PARK DRIVE  
MONTGOMERY, AL 36109-5420,

Taxpayers,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 10-591

### FINAL ORDER

The Revenue Department assessed Bamaco Bingo LLC (“Taxpayer”), and its members, Beverly R. Mitchell and Robert R. Mitchell, for State sales tax for August 28, 2009 through September 30, 2009. The Taxpayers appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on March 14, 2013. Robert Rutherford represented the Taxpayer at the hearing. Assistant Counsel Margaret McNeill represented the Department.

The Fairfield City Council enacted an ordinance in July 2009 authorizing the operation of bingo games by nonprofit organizations within the Fairfield city limits. The Grand Lodge of Knights of Pythias of North and South America, Europe, Asia, Africa, Australia, and Central America of the State of Alabama (the “Grand Lodge”) subsequently applied for and was granted a license to operate charity bingo in Fairfield pursuant to the above ordinance.

On August 1, 2009, the Taxpayer leased the premises at 6501 E. J. Oliver Boulevard, Fairfield, Alabama from a California LLC for a base rent of \$48,000 per month. The Taxpayer subleased the property to the Grand Lodge on August 7, 2009 for a base

rent of \$75,000 per month. The Grand Lodge also paid the Taxpayer to repair/remodel the facility as necessary for the operation of electronic “bingo” machines at the facility. Approximately 700 electronic “bingo” machines were installed at the facility in August 2009, and the facility opened to the public under the name Bamaco Bingo on or about August 28, 2009.

A Revenue Department examiner investigated in late 2009 to determine who was operating the electronic machines at the facility for the purpose of identifying the party liable for the gross receipts sales tax on the facility’s gross proceeds. The examiner mailed a letter to Robert Mitchell, a member of the Taxpayer, Bamaco Bingo LLC, requesting records concerning the facility. Mitchell failed to respond. The examiner subsequently talked to someone with the Grand Lodge, and was told that Mitchell and Bamaco Bingo LLC had operated the facility from August 2009 until mid-October 2009. The examiner thus determined that the Taxpayer was liable for the gross receipts sales tax on the facility’s “bingo” receipts during the period. Because the Taxpayer had not provided the examiner with any records, the examiner estimated the facility’s gross receipts based on average monthly receipts information previously obtained concerning electronic “bingo” operations in Walker County, Alabama. The Department subsequently assessed the Taxpayer, and its members, individually, for the estimated tax due. The Taxpayer appealed.

The parties agreed to hold the case in abeyance pending a final decision in *State of Alabama v. Kingsley*, Jefferson County Circuit Court, CV-2010-901445. The issue in *Kingsley* was whether individual members of a multimember LLC are personally liable for

the non-income taxes owed by the LLC. The Department subsequently dismissed its appeal in *Kingsley* and conceded that individual multi-member LLC members are not liable for the non-income taxes owed by the LLC. Consequently, the remaining issue in this case is whether the Taxpayer operated the electronic machines during the assessment period, and is thus liable for the sales tax on the proceeds from the machines.

Debra Lewis testified at the March 15 hearing that she currently operates a bookkeeping/accounting business in North Alabama, but that she was employed by the Grand Lodge as their bookkeeper at the facility in issue during the subject period. In that capacity, she maintained the facility's books and records, made all bank deposits, paid all employees, and handled all of the facility's tax-related obligations.

Lewis testified that the individuals that worked at and operated the facility were employed by the Grand Lodge, that the machine receipts were removed from the machines by those Grand Lodge employees, and that all money removed from the machines was either deposited into the Grand Lodge's bank account or held by the Grand Lodge for next-day use at the facility. She further explained that Bamaco Bingo LLC and/or Robert Mitchell were in no way involved in operating the facility, other than sub-leasing the building to the Grand Lodge and performing various repairs on the building.

It is understandable that the Department examiner initially understood that the Taxpayer, Bamaco Bingo LLC, had operated the facility during the period in issue, and thus was liable for the gross receipts sales tax on the facility's gross proceeds. The examiner conceded at the March 14 hearing, however, that he is still not sure whether the Taxpayer or the Grand Lodge had operated the facility. The evidence submitted at the March 14

hearing clearly shows, however, that the Grand Lodge, and not the Taxpayer, had operated the facility during the assessment period. Consequently, the Taxpayer is not liable for the sales tax due on the facility's gross receipts during the period.

The final assessment is voided.

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

Entered March 19, 2013.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: Margaret Johnson McNeill, Esq.  
Warren C. Matthews, Esq.  
Robert H. Rutherford, Esq.  
Joe Walls  
Mike Emfinger