

HOLIDAY SPECTACULAR, INC.
1768 HUBBARD ROAD
NEWTON, AL 36352-8858,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. S. 11-371

v.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER

The Revenue Department assessed Holiday Spectacular, Inc. ("Taxpayer") for State sales tax for September 2007 through September 2010. 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 August 23, 2011. Maxine Chappell represented the Taxpayer. Assistant Counsel Christy Olinger represented the Department.

The Taxpayer operates a theme or amusement park outside of the City of Dothan in Houston County, Alabama. The park began operating in 2007, and is open annually from Thanksgiving through the end of December.

The park is located on 55 acres, and offers hayrides, live music, Christmas plays, puppet and magic shows, and fireworks displays, among other events. It has also hosted weddings at an on-site chapel. One of the park's primary attractions is a Christmas light display which includes over 14 million lights.

The park charges a \$6 admission fee for active military members, senior citizens, and individuals under 10. Individuals over 10 pay \$7. Babies and toddlers under 3 are free.

The Department audited the Taxpayer for sales tax for the period in issue and assessed it for the 4 percent public amusement gross receipts "sales" tax levied at Code of

Ala. 1975, §40-23-2(2). That section levies a 4 percent tax on the gross receipts derived from “the business of conducting or operating places of amusement or entertainment, . . . or any other place at which any exhibition, display, amusement, or entertainment is offered to the public or place or places where an admission fee is charged, . . .” The Department assessed the Taxpayer based on daily guest and admission fee totals provided by the Taxpayer.

The Taxpayer’s owner contends that neither she nor her accountant were aware that her business was liable for the amusement sales tax in issue. Department Reg. 810-6-1-.125 addresses the gross receipts sales tax, and provides examples of the types of activities that are subject to the tax. The owner argued at the August 23 hearing that her park does not fit any of the examples listed, and thus should not be subject to the tax.

Section 40-23-2(2) is a tax levy statute, and thus in case of doubt must be construed for the taxpayer and against the Department. *City of Arab v. Cherokee Elec. Co-op.*, 673 So.2d 751 (Ala. 1995). Unfortunately for the Taxpayer in this case, there can be no doubt that the Taxpayer’s park is a public place of amusement or entertainment. The admission fees to the park are thus clearly subject to the gross receipts sales tax levied at §40-23-2(2). That conclusion is confirmed by Reg. 810-6-1-.125(3)(e)1., which includes “amusement parks” as an example of a taxable activity. The Taxpayer’s business can best be described as a public amusement park based on the evidence taken at the August 23 hearing.

I sympathize with the owner because she clearly was not aware that her business was subject to the 4 percent amusement sales tax. She is also currently suffering financial

difficulties, and is unable to pay the tax in issue due to unrelated circumstances. Consequently, while the tax and interest required by statute must be affirmed, it is hoped that the Department will allow the owner to pay the amount due over an extended period.

The final assessment is affirmed. Judgment is entered against the Taxpayer for State sales tax and interest of \$8,248.61. Additional interest is also due from the date the final assessment was entered, April 13, 2011.

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

Entered August 25, 2011.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Christy L. Olinger, Esq.
Maxine Chappell
Dan Bass
Mike Emfinger