

JO ANN ARMSTRONG
d/b/a PROFESSIONAL HEARING
AID CENTER
913 RIVER FALLS STREET
ANDALUSIA, AL 36420,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 12-323

FINAL ORDER

The Revenue Department assessed Jo Ann Armstrong (“Taxpayer”), d/b/a Professional Hearing Aid Center, for State sales tax for June 2008 through May 2011. 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 June 21, 2012. The Taxpayer attended the hearing. Assistant Counsel Margaret McNeill represented the Department.

The Taxpayer operated a hearing aid center in Andalusia, Alabama during the subject period. She sold hearing aids to the general public, and also performed maintenance and repairs on the hearing aids and hearing aid accessories.

The Taxpayer did not maintain an inventory of hearing aids. Rather, she special ordered a hearing aid for each customer that fit the special needs of the customer. The Taxpayer programmed and otherwise prepared the hearing aid for use before providing it to a customer.

The Department audited the Taxpayer and discovered that the Taxpayer had charged her customers sales tax on only her wholesale cost of the hearing aids. For example, if the Taxpayer purchased a hearing aid for \$700 and sold it to a customer for \$1,000, the Taxpayer would charge the customer sales tax on only her \$700 cost. The

Department determined that sales tax was due on the entire sales price. It assessed the Taxpayer accordingly.

“Gross proceeds of sale” is defined as “the value proceeding or accruing from the sale of tangible personal property, . . . without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service costs, interest paid, any consumer excise taxes that may be included within the sales price of the property sold, or any other expenses whatsoever, . . .” Code of Ala. 1975, §40-23-1(a)(6). Dept. Reg. 810-6-1-.84(2) further provides that sales tax is due on labor or service charges, whether included in the total price of a product or billed as a separate item, if the labor or service is incurred incidental to preparing the product for sale and is performed before the sale is closed.

The above statute and regulation clearly require that sales tax must be collected on the full amount received by a seller from a customer. A seller cannot deduct his or her labor or other costs incurred in selling a product, as the Taxpayer did in this case. This same issue was addressed in *Webster Enterprises v. State of Alabama*, S. 03-165 (Admin. Law Div. O.P.O. 6/12/03), which also involved a separate labor fee charged by an auctioneer:

Generally, any charge for labor, transportation, or other services performed by a retailer in conjunction with and before the sale of tangible personal property constitutes taxable gross proceeds. *East Brewton Materials, Inc. v. State*, 233 So.2d 751 (Ala. Civ. App. 1970). In this case, the Taxpayer charged a five or ten percent fee to offset her labor costs incurred in packing, storing, and delivering merchandise for her customers. The sale of the merchandise was not closed until the merchandise was delivered to the customers. *State v. Delta Air Lines*, 356 So.2d 1205 (Ala. Civ. App. 1978). Consequently, the five or ten percent labor charges constituted gross proceeds subject to sales tax.

The Taxpayer in this case testified that she has always paid sales tax on her cost of the hearing aids on the advice of her accountant/tax preparer. Unfortunately for the Taxpayer, as discussed above, Alabama law is clear that sales tax was due on the full retail sales price the Taxpayer charged her customers.

The Taxpayer also explained that she cannot pay the amount of the final assessment, and that if she was required to pay the assessed amount due, she would be forced to close her business. It is for just such situations that the Legislature enacted the installment payment provisions at Code of Ala. 1975, §40-2A-4(b)(6). The Department should contact the Taxpayer in due course concerning a payment arrangement that hopefully will allow the Taxpayer to continue in business. The Taxpayer may contact Mike Emfinger in the Department's Sales, Use, and Business Tax Division at 334-242-1570 concerning payment arrangements.

The final assessment is affirmed. Judgment is entered against the Taxpayer for tax and interest of \$7,429.17. Additional interest is also due from the date the final assessment was entered, March 2, 2012.

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

Entered June 26, 2012.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Margaret Johnson McNeill, Esq.
Jo Ann Armstrong
Joe Walls
Mike Emfinger