

HANDY MART, LLC
d/b/a SPRINGVILLE HANDYMART
6201 US HIGHWAY 11
SPRINGVILLE, AL 35146-4064,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 13-844

FINAL ORDER

The Revenue Department assessed Handy Mart, LLC (“Taxpayer”), d/b/a Springville Handymart, for State sales tax for March 2009 through February 2012. 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 November 21, 2013. CPA Dilip Kapadia represented the Taxpayer. Assistant Counsel Margaret McNeill represented the Department.

The Taxpayer operated a convenience store in Pell City, Alabama during the period in issue. It also operated a convenience store in Springville, Alabama from March 2009 through March 2010. Both locations sold gasoline, beer, wine, snack foods, and other food items.

The Department audited the Taxpayer for sales tax for the period in issue and requested records from which the Taxpayer’s sales tax liability could be computed/verified. The Taxpayer provided its bank records, and some purchase invoices and cash register z-tapes.

The Department examiner reviewed the z-tapes and discovered that the sales totals on the tapes did not match the sales reported on the Taxpayer’s monthly sales tax returns.

The Taxpayer's purchase invoices also revealed that the amount paid by the Taxpayer for its merchandise at wholesale was only slightly less than the Taxpayer's reported retail sales.

The Department examiner determined from the above that the Taxpayer's sales and purchase records were incomplete, and thus insufficient to accurately compute the Taxpayer's liability for the period. He consequently computed the Taxpayer's liability using a purchase mark-up audit.

Simply stated, a retailer's sales tax liability is computed through a purchase mark-up audit by determining the retailer's wholesale purchases, and then applying a reasonable percentage retail mark-up to determine the retailer's estimated retail sales. The sales tax due is computed on those estimated sales, and a credit for sales tax previously reported and paid is then allowed to arrive at the additional sales tax due.

In this case, the Department examiner followed the above procedures by first obtaining the Taxpayer's purchase information for the audit period from its vendors. He then applied the standard IRS retail mark-up of 35 percent applicable to convenience store/gasoline stations to arrive at the Taxpayer's estimated retail sales. He applied the four percent State sales tax rate to determine the total tax due. He then allowed a credit for sales tax previously paid to determine the additional tax due. A five percent negligence penalty was also applied because the Taxpayer had failed to keep adequate records during the period.

The Taxpayer's representative explained that the Taxpayer did not have complete records for its Springville store because the store manager died in a car crash in February

2010. The manager's widow attempted to operate the store, but was unable to effectively do so because she also had to care for her two small children. Consequently, some of the store's records were misplaced/lost while the widow ran the business. Some of the Taxpayer's records were also destroyed in a fire in June 2013.

The representative also argues that the Taxpayer's stores had a lot of employee turnover, and that the temporary employees were not allowed to void an incorrect entry on the cash register. Rather, the owners subsequently adjusted the errors, but the adjustments were not reflect on the z-tapes, which, according to the representative, consequently showed an excessive amount of sales. The representative also argues that the examiner viewed Sundays as a typical business day, even though the stores' sales were much less on Sundays.

Finally, the representative asserts that the Taxpayer paid tax on credit sales when they were made. To avoid the sales being double taxed, it consequently rang up any subsequent payments on the credit accounts as a nontaxable oil sale. The representative claims that the Department examiner nonetheless computed sales tax on all oil sales, which resulted in double taxation.

All retailers subject to Alabama sales tax are statutorily required to keep complete accurate sales, purchase, and other records from which their correct sales tax liability can be computed. Code of Ala. 1975, §§40-2A-7(a)(1) and 40-23-9. A retailer's duty to keep sales records is straightforward and simple. The retailer must record all sales on a cash register z-tape and/or on customer invoices or receipts, which may then be compiled onto a monthly sales journal. It is commonly understood that such records must be maintained to

allow the Department to verify that the correct amount of sales tax has been reported and paid.

The Taxpayer in this case failed to provide complete records. In such cases, the Department is authorized to compute a taxpayer's correct liability using the most accurate and complete information obtainable. Code of Ala. 1975, §40-2A-7(b)(1)a. The Department can also use any reasonable method to compute the liability, and the taxpayer, having failed in the duty to keep good records, cannot later complain that the records and/or method used by the Department is improper or does not reach a correct result. *Jones v. CIR*, 903 F.3d 1301 (10th Cir. 1990); *State v. Ludlum*, 384 So.2d 1089 (Ala. Civ. App.), cert. denied, 384 So.2d 1094 (Ala. 1980) (A taxpayer must keep records showing the business transacted, and if the taxpayer fails to keep such records, the taxpayer must suffer the penalty for noncompliance). The Department examiner thus properly conducted a purchase mark-up audit to compute the Taxpayer's liability for the subject period.

The purchase mark-up audit is a simple, oft-used Department method of determining a taxpayer's sales tax liability when the taxpayer fails to keep accurate sales records. See generally, *GHF, Inc. v. State of Alabama*, S. 09-1221 (Admin. Law Div. 8/10/10); *Thomas v. State of Alabama*, S. 10-217 (Admin. Law Div. O.P.O. 5/18/10); *Alsedeh v. State of Alabama*, S. 03-549 (Admin. Law Div. 11/3/04).

Because the Taxpayer in this case failed to maintain adequate records from which its sales could be accurately computed or verified, the Department examiner correctly conducted a purchase mark-up audit to reasonably compute the Taxpayer's liability for the audit period. The tax due as computed by the audit is by its nature an estimate, but the

examiner of necessity estimated the Taxpayer's liability because the Taxpayer failed to maintain adequate records. As discussed, because the Taxpayer failed to maintain good records, as required by Alabama law, it cannot now complain that the Department's computations must be rejected as inexact estimates.

The Taxpayer's representative's objections also have no bearing on the accuracy of the Department's audit. The examiner did not use the Taxpayer's z-tapes. Consequently, the fact that the Taxpayer's z-tapes are not accurate due to inaccurate entries by its employees is of no consequence. The Taxpayer's other sales records, accurate or not, also were not used in the audit. As explained, the examiner simply determined the Taxpayer's wholesale purchases using independent vendor records. He then applied a reasonable mark-up to determine the estimated tax due.

The Department audit was properly conducted using the best information available. The final assessment based on the audit is accordingly affirmed. Judgment is entered against the Taxpayer for tax, penalty, and interest of \$76,993.58. Additional interest is also due from the date the final assessment was entered, July 25, 2013.

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

Entered February 10, 2014.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Margaret Johnson McNeill, Esq.
Dilip K. Kapadia, CPA
Jane Mayberry