

STATE OF ALABAMA

§

STATE OF ALABAMA

DEPARTMENT OF REVENUE

ADMINISTRATIVE LAW DIVISION

V.

§

LOYAL ORDER OF THE MOOSE

§

DOCKET NO. S. 85-104

LODGE NO. 254

2015 Federal Drive

§

Montgomery, AL 36109

§

Taxpayer.

ORDER

This matter involves three preliminary assessments of State, Montgomery County and City of Montgomery sales tax entered by the Revenue Department against the Taxpayer for the period October 1, 1981 through August 31, 1984. On January 25, 1985, the Taxpayer requested a hearing with this office, and a hearing date was set for April 25, 1985. At said hearing, the Taxpayer was represented by members Lester Hawkins, Robert Moncrief and Ronny Bowden. The Revenue Department was represented by assistant counsel Adolph Dean. Based on the testimony and exhibits introduced at the hearing, the following findings and conclusions are hereby made and entered.

FINDINGS OF FACT

The Taxpayer in this case, The Loyal Order of the Moose Lodge No. 254, is located at 2015 Federal Drive, Montgomery, Alabama. The Taxpayer is a nonprofit organization that engages in various charitable and civic activities. Among the events staged by the Taxpayer are dances, bingo games, raffles and barbecues. The Taxpayer charges an admission fee to most of its activities and also receives proceeds from the sale of liquor,

beer, snacks and other like items.

The Revenue Department audited the Taxpayer for State of Alabama, Montgomery County and City of Montgomery sales tax for the period September 1, 1981 through August 31, 1984. The audit was based on the Taxpayer's records and on additional records provided by the Montgomery County Sheriff's office relating to bingo attendance and receipts. The assessments are based on the audit and cover the same period as the audit, except that September, 1981 was deleted when the assessments were entered.

The auditor set up tax on two general categories of gross proceeds, those derived from the sales of liquor, beer, etc. made by the Lodge, and those derived from the events and activities sponsored by the Lodge. The Taxpayer does not dispute that sales tax is due on its sales, but does challenge the tax levied on the gross proceeds derived from its civic activities.

After completion, the audit was submitted to the Sales and Use Tax Division central office in Montgomery for review. Upon review, which included an informal conference attended by members of the Lodge, the audit was adjusted so that all donations and the proceeds of a turkey shoot were deleted. Based on the revised audit, the assessments in issue were entered.

The Revenue Department argues that the proceeds derived by the Lodge from its civic activities are subject to sales tax under the provisions of Code of Ala. 1975, §40-23-2(2). The Taxpayer does

not dispute the technical accuracy of the audit, but does contest the Department's contention that the proceeds derived from its sponsored events and activities are subject to sales tax. The Taxpayer's position is based on the argument that it is a charitable organization and also on the fact that the Department had not previously attempted to tax said proceeds.

CONCLUSIONS OF LAW

Code of Ala. 1975, Section 40-23-2(2), levies a sales tax on gross proceeds as follows:

(2) Upon every person, firm or corporation engaged or continuing within this state in 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, . . . an amount equal to 4 percent of the gross receipts of any such business.

The proceeds in dispute are those derived by the Taxpayer from its charitable and civic activities, i.e. admission or entry fees to dances, bingo games, etc. In sponsoring said activities, the Taxpayer is clearly operating or conducting a place of amusement or entertainment open to the public. Accordingly, there can be no question that the proceeds from said activities are subject to sales tax under the above-quoted section.

At the hearing, the Taxpayer pointed out that a number of similar organizations are exempt from sales tax by specific statute., However, the Taxpayer further admitted that the Moose Lodge presently has no such exemption. Without a specific statute

authorizing exclusion, there can be no exemption from taxation.

The Taxpayer also argues that to tax the Lodge's activities presently would be inequitable and discriminatory in that it had paid no tax during the previous 20 years, and also because not all civic organizations had been subjected to audit. However, the fact that the Lodge had not been taxed previously on the gross proceeds derived from its activities does not and should not bar the present and future collection of such tax, if the tax is found to be properly due, as in the present case. Also, the Department's failure to audit all similar civic organizations cannot relieve the Taxpayer from its liability for the tax in question.

Based on the above, it is hereby determined that the assessments in issue are correct and should be made final by the Department. The Department is hereby directed to make said assessments final.

DONE this 30th day of April, 1985.

BILL THOMPSON
Chief Administrative Law Judge