

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. S. 85-143

TRAVIS W. "TAB" CHANDLER
312 Stinson Street
Centre, Alabama 35960,

§

§

Taxpayer.

§

ORDER

This matter involves two disputed preliminary assessments of State and Cherokee County sales tax entered by the Department against the Taxpayer, Travis W. "Tab" Chandler, for the period November 1, 1981 through June 26, 1983. A formal administrative hearing was held on May 15, 1986, at which the Taxpayer was present and represented himself. The Department was represented by the Hon. Deborah Sanders. Based on the exhibits and testimony received at the hearing, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

During the period in issue, the Taxpayer operated a bait shop, auction and restaurant, all under the same sales tax number. As part of a routine audit of the Taxpayer's businesses, the Department auditor requested all of the Taxpayer's records concerning sales and purchases. The only records produced by the Taxpayer was a cash disbursements journal showing bank deposits and cash paid out to vendors. No vendors were listed by name. The auditor independently obtained the Taxpayer's income tax returns

from the Taxpayer's accountant. Utilizing the cash disbursements journal and the Taxpayer's income tax returns, the audit proceeded as follows:

The cash disbursements journal was complete only for the year 1982. Thus, for that year the auditor added the cash paid out to vendors and the bank deposits as indicated in the journal to arrive at the taxable measure including sales tax. Sales tax was "backed out" of the measure by dividing the gross measure by one hundred five percent (105%), to arrive at the net taxable measure.

The only information concerning the two months in 1981 covered by the audit was the total year gross receipts figure reported by the Taxpayer on his income tax return, Schedule C. One sixth (2/12) of that figure was projected as the gross receipts for November and December, 1981. The net taxable measure was determined by again "backing out" the sales tax.

For the six months of 1983 included in the audit, the Taxpayer's journal indicated only bank deposits from the restaurant and auction. Those figures were used to determine gross receipts, from which the taxable measure was determined by removal of the sales tax. The applicable State and County tax rates were applied to each year's taxable measure to arrive at the tax due.

The Taxpayer argued that a portion of his sales were non-taxable wholesale transactions. The Taxpayer had not produced any substantiating records of wholesale sales when requested to do so by the Department auditor. The Taxpayer testified at the hearing

that he had lost the verifying records and later learned that they had been destroyed in a warehouse fire. The Taxpayer offered no additional records or other evidence to dispute the audit.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-23-9 requires all taxpayers to keep proper and adequate records as may be necessary to determine the proper amount of tax due. If a taxpayer fails to keep sufficient records, then the tax due shall be assessed using the best information available, and the taxpayer is without grounds to object to the manner in which such liability is calculated.

In the present case, the Taxpayer failed to produce any invoices, sales receipts or other records from which his total sales could be determined. Thus, the Department auditor acted correctly in reconstructing the Taxpayer's taxable receipts using the best and only information available, the Taxpayer's disbursements journal and income tax returns. The Taxpayer is without grounds to now object to the accuracy of those calculations. State v. T. R. Miller Mill Co. , 130 So. 2d 185; State v. Levey, 29 So. 2d 129. Accordingly, in view of the Taxpayer's failure to substantiate any wholesale sales, the Department's audit must be upheld as entered.

Based on the above, the Sales Tax Division is hereby directed to make final the assessments in issue as originally entered, with appropriate interest.

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Done this 20th day of May, 1986.

BILL THOMPSON
Chief Administrative Law Judge