

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. S. 88-121

R. RUSH SMITH, SR.
d/b/a Mountain Top Package Store
P.O. Box 266
Ashville, AL 35953,

§

§

§

Taxpayer.

ORDER

The Revenue Department entered preliminary assessments of sales tax against R. Rush Smith, Sr., d/b/a Mountain Top Package Store ("Taxpayer") for State sales tax for the period July 1, 1984 through June 30, 1987; City of Steele sales tax for the periods June 1, 1986 through October 31, 1986 and May 1, 1987 through June 30, 1987; and City of Ragland sales tax for the period January 1, 1987 through June 30, 1987.

The Taxpayer appealed to the Administrative Law Division and a hearing was scheduled for October 4, 1988. The Taxpayer was notified of the hearing by certified mail on September 2, 1988. However, the Taxpayer failed to appear at the time and location set for the hearing. The hearing proceeded, and based on the evidence presented by Department assistant counsel Sam Clenney, III, the following findings of fact and conclusions of law are hereby made and entered.

Findings of Fact

The Taxpayer operated three retail beer and liquor stores during the periods in question. The stores also carried tobacco products,

snack items, soft drinks, wine and other miscellaneous items. The Taxpayer computed and paid sales tax on whiskey sales based on his wholesale cost plus a 10% markup. Gross receipts from beer sales were computed by multiplying the number of cases sold by an estimated average wholesale cost of \$10.00 per case, then adding the same 10% markup.

The Department audited the Taxpayer as follows: The Taxpayer failed to provide adequate sales records (only partial cash register tapes from one store were produced). Consequently, the Department computed the cost of goods sold plus a profit markup as follows:

Wholesale beer purchases were determined from vendor information and some invoices and cancelled checks provided by the Taxpayer.

A markup of 31% was added to arrive at taxable beer sales. The markup was a weighted average of the retail sales prices advertised by the Taxpayer.

The Taxpayer's whiskey cost was determined from purchase information received directly from the Alabama ABC Board. A markup of 37% was applied to arrive at taxable sales. The markup was again computed from the Taxpayer's advertised retail sales prices.

Total sales proceeds for soft drinks, groceries, tobacco products, wine and other miscellaneous items were based on vendor invoices. Markups were determined from the sales prices as advertised on the various items.

The preliminary assessments in question were based on gross

proceeds as computed above. However, the audit was reviewed by the Sales Tax Division in Montgomery and a lower 10% markup was applied on 40% of the beer and whiskey sold by the Taxpayer. The lower profit markup was applied to allow for the bulk or case sales made by the Taxpayer. The adjusted markup reduced the Taxpayer's State liability down to \$26,506.20, including penalty and interest computed through March 15, 1988.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-23-9 requires all taxpayers to keep such books and records as necessary for the Department to determine the proper tax due. The Department is not required to rely on the taxpayer's verbal assertions in the absence of such records, State v. Ludlum, 384 S.2d 1089; State v. Mack, 411 So.2d 799. Rather, the Department can compute liability based on the best available information, and the Department's computations are prima facie correct. State v. Ludlum, supra.

The simplest and most accurate method for recording and reporting taxable sales is a daily sales ledger or other sales records which can be verified by purchase invoices and/or other vendor information. But in the present case the Taxpayer failed to maintain any substantive sales records whatsoever.

Rather, the Taxpayer estimated his liability by taking whiskey purchases (partial) and adding an arbitrary 10% markup. With beer, the Taxpayer estimated an average \$10.00 per case wholesale cost

and again applied a 10% markup.

The Department properly questioned the Taxpayer's computations and recomputed liability based on the Taxpayer's partial records and all other available vendor information. Markups were computed based on the actual retail sales prices charged by the Taxpayer.

The 31% beer and 37% whiskey markups were reduced to 10% on 40% of the subject sales, presumably based on the Taxpayer's assertion of a lower profit margin on bulk or case lot sales.

The Department's computations are reasonable and based on the best available information. The Taxpayer failed to maintain adequate records. Consequently, the Taxpayer must abide by the Department's audit results. Accordingly, the Department is hereby directed to make the assessments final as entered and subsequently adjusted, with interest as required by statute.

Entered this 13th day of October, 1988.

BILL THOMPSON
Chief Administrative Law Judge