

INDUSTRIAL TIRE OF ALA., INC. '
102 Elliot Avenue
Muscle Shoals, AL 35661, '

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer, '
v. '
STATE OF ALABAMA
DEPARTMENT OF REVENUE.

DOCKET NO. S. 01-276

FINAL ORDER

The Revenue Department assessed Industrial Tire of Alabama, Inc. (ATaxpayer@) for City of Muscle Shoals and State sales tax for March 1997 through February 2000. 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 July 12, 2001 in Birmingham, Alabama. The Taxpayer's representative was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Wade Hope represented the Department.

The Department audited the Taxpayer, and assessed the tax in issue because (1) the Taxpayer failed to remit sales tax it had overcollected from its customers, and (2) the Taxpayer failed to collect tax on certain sales it claims were exempt, but for which it failed to provide records showing the exempt nature of the sales.

The Taxpayer apparently does not dispute that it overcollected sales tax from its customers, and failed to remit that tax to the Department. Rather, the Taxpayer's representative explained that he was informed in the early 1980s that he was not required to remit overcollected tax to the Department.

The Alabama Legislature amended Code of Ala. 1975, ' 40-23-26 in 1997 to require that any sales tax overcollected by a retailer must be remitted to the Department. See

generally, *Sizemore v. Krupp Oil Company*, 597 So.2d 211 (Ala.Civ.App. 1992), and *Dandy-s Package Store, Inc. v. Sizemore*, 597 So.2d 1370 (Ala.Civ.App. 1992). The Department thus properly assessed the Taxpayer for the sales tax it overcollected during the audit period.

Concerning the alleged exempt sales, the Taxpayer was required to keep adequate records showing why such sales were exempt. In the absence of such records, the Taxpayer must suffer the penalty of noncompliance, and pay tax on the sales not so accurately recorded as exempt. *State v. Ludlum*, 384 So.2d 1089 (Ala.Civ.App.), cert. denied 384 So.2d 1094 (Ala. 1980). Consequently, because the Taxpayer failed to provide records showing the exempt nature of the sales in question, those sales were properly taxed by the Department.

The final assessments are affirmed. Judgment is entered against the Taxpayer for City of Muscle Shoals tax and interest of \$1,411.22, and State tax and interest of \$8,891.25. Additional interest is also due from the date of entry of the final assessments, December 21, 2000.

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

Entered July 17, 2001.