

**ALABAMA TAX TRIBUNAL**

VV & CO., LLC,	§	
Taxpayer,	§	DOCKET NO. CITY 23-1081-LP
v.	§	
CITY OF BOAZ, ALABAMA	§	

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VV & CO., LLC,	§	
Taxpayer,	§	DOCKET NO. CITY 23-1082-LP
v.	§	
CITY OF ALBERTVILLE, ALABAMA	§	

**FINAL ORDER**

Docket No. CITY 23-1081-LP involves the entry by the City of Boaz of a final assessment of sales tax for the periods August 2019 through July 2022. Docket No. CITY 23-1082 involves the entry by the City of Albertville of a final assessment of sales tax for the periods January 2020 through July 2022. A trial was held on December 3, 2024. Mark Cowell, on behalf of Avenu Insights & Analytics (“Avenu”), represented both the City of Boaz and the City of Albertville (hereinafter collectively referred to as “the cities”). Sherry Dale, an auditor administrator for Avenu, appeared and testified by telephone. Despite having been notified of the date, time, and place of the trial, no member or representative of the Taxpayer appeared for the trial.

The Taxpayer’s two Notices of Appeal were filed by an Amanda Needham. In

the Notices, Ms. Needham states “[w]e don[’]t own a business in Boaz. We only wholesale cars, we do not retail cars. Since we do not retail cars our tax owed each month should be \$0.00[.]” In its Answer, Avenu explains that it conducted an “in-house audit and assessment of unpaid sales tax” levied by the cities of Boaz and Albertville. Specifically, Avenu avers that it conducted a desk audit of delinquent payment periods and issued preliminary assessments on September 8, 2022, based on the delinquent periods and the Taxpayer’s failure to contact Avenu regarding the delinquencies. Avenu called the Taxpayer on September 8, 2022, regarding the preliminary assessments, at which time the Taxpayer represented that it would submit a petition for review of the preliminary assessments. Avenu attempted to contact the Taxpayer again on October 7, 2022, and in February of 2023, but did not receive any communication from the Taxpayer after the September 8, 2022, phone call. Avenu then issued the final assessments on October 25, 2023. Avenu thereafter received no communications from the Taxpayer besides the Taxpayer’s general denial that it conducted any business during the audit periods.

At trial, Ms. Dale testified that the Taxpayer had not filed its monthly local sales tax returns, which led Avenu to determine the Taxpayer’s delinquencies. Ms. Dale stated that the Taxpayer had filed monthly returns prior to August 2019, beginning in September of 2018 and concluding in July 2019.<sup>1</sup> The Taxpayer’s

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<sup>1</sup> Ms. Dale failed to specify whether these returns were filed with Boaz or Albertville; however, Ms. Dale later testified that Avenu did not have any records of the Taxpayer’s filing any returns with or remitting any tax payments to the City of Boaz after January 1, 2013. She was unable to review periods prior to that date. Therefore, it is assumed that each of these returns was filed with the City of Albertville.

returns filed between September of 2018 and September of 2019 claimed varying amounts of sales, including multiple months that claimed \$0.00 in sales, as follows:

- September 2018 return claimed \$1,200.00 in sales;
- December 2018 return claimed \$8,000.00 in sales;
- February 2019 return claimed \$0.00 in sales;
- June 2019 return claimed \$0.00 in sales;
- and September 2019 return claimed \$0.00 in sales.<sup>2</sup>

Ms. Dale also testified that the Taxpayer began filing returns again in March of 2023 through the My Alabama Taxes website; however, these returns again indicated the Taxpayer had no sales income.

Ms. Dale testified that the final assessments in issue were based on the Taxpayer's delinquent filings, and the amounts comprising the final assessments were estimated and based on the Taxpayer's past filings. Specifically, the sales tax measures utilized in calculating the final assessments were \$2,500.00 per month in Boaz, and the Albertville automotive tax measure utilized was \$22,750.00 for the police jurisdiction rate and \$3,765.63 for the standard city rate.<sup>3</sup> Ms. Dale explained that these amounts were derived from the Taxpayer's past filings, although she did not know for which periods as she could not access the records for those filings, and that only the automotive tax was applied for Albertville. However, Ms. Dale also

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<sup>2</sup> The September 2019 return is additionally notable as it would have been filed within the audit period for the final assessment issued on behalf of the City of Boaz. However, as referenced *supra*, n.1, and discussed in more detail *infra*, Ms. Dale's testimony renders it unlikely that the September 2019 return was filed with the City of Boaz as Ms. Dale stated Avenu had no records of any filing with or payment to the City of Boaz after January 1, 2013.

<sup>3</sup> Ms. Dale explained that the automotive tax included in the Albertville final assessment is essentially the "sales tax for anything with wheels."

testified that neither Boaz nor Albertville received any documents or reviewed any records that showed the Taxpayer made any sales during the applicable audit periods. Referring specifically to the Taxpayer's filing and payment history for Boaz, Ms. Dale testified that Avenu did not have a record of any filings or payments since January 1, 2013. This inactivity caused Avenu to change the Taxpayer's account status for Boaz from monthly filing to occasional filing in 2019.

Ms. Dale testified that the sole foundation for the two final assessments in issue is the fact that the Taxpayer did not file returns or pay taxes. Ms. Dale conceded that neither Boaz nor Albertville received any documents or reviewed any records that indicated the Taxpayer made sales during the assessment period. Similarly, neither city had received or reviewed documents that indicated the Taxpayer purchased any items to sell during the audit period. Ms. Dale also conceded that no review was conducted to determine whether the Taxpayer was even in business during the audit periods. Again, Ms. Dale testified that the sole foundation for the assessments was the fact that the Taxpayer had not filed returns or paid taxes during the audit period despite having filed returns previously or registering on My Alabama Taxes website that it may do business in those cities. Further, no review was ever conducted to determine the preliminary issue of whether the Taxpayer had a reason to file returns or pay taxes beyond the acknowledgment that the Taxpayer had filed returns and paid taxes at some point prior to the return or stated that it may do business there.

While a final assessment is presumed to be *prima facie* correct on appeal under

Alabama Code § 40-2A-7(b)(5)c., it is well established that the final assessment must be “based on a minimum evidentiary foundation.” *Rikki D. Pickett*, No. S. 19-236-JP, 2 (Ala. Tax Trib. May 7, 2019); *Frontier Amusements, Inc.*, No. S. 10-947, 3 (Admin. Law Div. Ala. Dep’t of Revenue Nov. 30, 2011) (Fourth Preliminary Order Setting Hearing). *See also United States v. Janis*, 428 U.S. 433 (1976). As stated by the Supreme Court of the United States, “a tax determination without rational foundation is ‘not properly subject to the usual rule with respect to the burden of proof in tax cases.’” *Janis*, 428 U.S. at 441 (citing *Helvering v. Taylor*, 293 U.S. 507, 514-15 (1935)). “Where the record reflects no reasonable basis for the Commissioner’s assessment, where the assessment cannot be deemed reasonable on its face, and where no finding is made in that regard, we cannot afford a presumption of correctness to attach automatically to the assessment.” *Nicole Sawyer*, No. S. 14-164, 6 (Ala. Tax Trib. Oct. 17, 2014) (Op. and Preliminary Order). In a sales tax case, a taxing authority “can project a liability to a period only if there is evidence reasonably establishing that the retailer conducted business and made sales during the period.” *Id.* at 9.

In the case at hand, the cities of Boaz and Albertville have failed to establish that the final assessments in issue were based on a minimum evidentiary foundation. Ms. Dale’s testimony, as recounted above, evidenced that neither city had investigated whether the Taxpayer was in business or had made any sales during the audit periods in issue. In other words, the only assertion regarding whether the Taxpayer “conducted business and made sales during the [audit] period,” is the

Taxpayer's general denial included in its notices of appeal. Instead, the sole foundation for the cities' entry of the two final assessments in issue was that the Taxpayer had filed tax returns at some point prior to the audit periods in issue but then stopped filing returns as regularly or registered on My Alabama Taxes website. Such reasoning is simply insufficient to justify the final assessments at issue.

Therefore, the final assessments issued by the City of Boaz for the periods August 2019 through July 2022 (Docket No. CITY 23-1081-LP) and the City of Albertville for the periods January 2020 through July 2022 (Docket No. CITY 23-1082) are voided. Judgment is entered accordingly.

This Final Order may be appealed to circuit court within 30 days, pursuant to Ala. Code § 40-2B-2(m). Further, either party may file an application for rehearing from this final order within 15 days, pursuant to Ala. Code § 40-2B-2(1)(5).

Entered February 3, 2025.

/s/ Leslie H. Pitman  
LESLIE H. PITMAN  
Associate Judge  
Alabama Tax Tribunal

lhp:thb

cc: Amanda Needham  
J. Mark Cowell, Esq.