

ALABAMA TAX TRIBUNAL

LIL STEVE'S, LLC, AND ITS SOLE	§	
MEMBER, STEVEN MODAS, JR.,	§	
Taxpayer,	§	DOCKET NO. S. 19-1304-JP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.	§	

OPINION AND FINAL ORDER

This appeal involves a final assessment of state sales tax and a final assessment of local sales tax, each for the periods of May 2016 through January 2019. Following a hiatus on trials before the Tax Tribunal because of the COVID virus, a trial was held on December 19, 2022. Various post-trial scheduling orders were entered by the Tax Tribunal, with briefing schedules being extended multiple times at the request of the parties. And the parties filed post-trial briefs.

A second trial was held on November 21, 2024, after the parties were given another opportunity to subpoena vendor records concerning the Taxpayer's wholesale purchases. The Taxpayer was represented at trial by William Diver, and the Taxpayer's accountant, Keith Collier, Jr., testified for the Taxpayer. The Revenue Department was represented by Hilary Parks, and Revenue Department examiner Sherrie Johnson testified for the Department.

Prior to the second trial, the parties submitted to the Tax Tribunal the following:

“JOINT STIPULATION

COMES NOW, the Parties, through their respective counsels, and per the Court’s order, present the following factual stipulations.

Factual Stipulations

- 1) Steven Modas Jr., owned and operated Lil Steve’s package store.
- 2) The package store operated up to 9 different locations in the Shoals.
- 3) The Department’s audit included 7 locations, 2 package stores and 5 convenience stores.
- 4) Lil Steve’s was audited as a sole proprietorship prior to this audit.
- 5) Lil Steve’s maintained daily records which included Z Tapes.
- 6) Lil Steve’s states that these records were used to create spread sheets which were the basis for the sales tax returns.
- 7) The WRAP system was not utilized during much of the audit period in the present case.

Audit Specific Items

1. Keith Collier Jr. was the accountant responsible for Lil Steve’s returns and financials.
2. At all points during the audit period Keith was the representative of the taxpayer.
3. The auditor contacted the taxpayer and requested specific information.
4. The auditor received the spreadsheets which were used to prepare the tax returns.
5. The auditor raised concerns at this point.
6. The auditor requested further information, namely bank statements and invoices.
7. The auditor used bank statements she received to conduct the audit.
8. The primary issue asserted by the Department is that purchases exceeded sales consistently for the periods of the audit.

Claims

1. The taxpayer asserts that he paid all taxes which were due.
2. The taxpayer admits to filing late.
3. The Department asserts that the Taxpayer has not filed income tax returns for several years and has not paid all taxes due.
4. The taxpayer admits he is out of business.
5. The taxpayer maintained copious amounts of sales records.
6. The Taxpayer asserts that these sales records included Z tapes, invoices, and cash reports for each store for every day during the audit period.

7. The taxpayer asserts that he had 9 stores at the height of his operation and it was common for purchase records to be made at an entity level and not on a store by store basis. As such, inventory was often moved from one store to another.
8. The taxpayer asserts that these are the best records from which to calculate sales tax.
9. The taxpayer asserts that the records which he has made available on multiple occasions and which were reviewed contain any and all information which would be required to accurately calculate the sales taxes due as they show every dollar of sales during the audit period.
10. Further, the taxpayer asserts that for the reasons below the auditor's calculation of purchases is inaccurate.
11. The Department asserts that it used the taxpayer's records during the audit to calculate purchases.
12. The Department asserts that it has reviewed the Taxpayer's records since the audit and the same issues exist.
13. Based on taxpayer's assertions and subsequent review of records, the Department agreed to lower the markup percentage to 20% to the benefit of the taxpayer.

Purchase Records

1. The taxpayer denies that the purchase records calculated by the Department are accurate.
2. The Department asserts that it used the best information available to calculate the store purchases.
3. Keith located a series of issues with the purchase records as they were generated in real time.
4. First, check numbers were entered in instead of receipts which inflated the number by several million dollars.
5. Second, there were other key in errors which again inflated the amount.
6. Third, Mr. Collier located other errors which included double counting returned checks and other items which were indicative of the financial stress the business was under.
7. Fourth, the taxpayer asserts that multiple stores were sold during the audit period and their individual inventory was sold in a bulk manner. As it is illegal to sell beer to another party in that manner there were no records for the individual sales of store inventory.
8. Fifth, the taxpayer asserts that the auditor did not properly account for rebates on tobacco and other items which were not taxable.
9. Sixth, the taxpayer was subject to the usual wastage, out of dates, and theft of any store.
10. The Department asserts that it worked with Mr. Collier to remove any errors found.

11. The Department asserts that it used the taxpayer's records but also subpoenaed vendor records which should account for any returned checks that may have made an error.
12. The Department asserts that any items found by Mr. Collier that warranted adjustment have been adjusted.
13. The Department asserts all credit was given for rebate information that was provided.
14. The Department asserts that waste, spoilage, and theft is included in the 35% markup used by the Internal Revenue Service.

RESPECTFULLY SUBMITTED, the 13th day of August 2024.”

During the second trial, the Revenue Department did not dispute the Taxpayer's assertion that the Taxpayer maintained a complete set of z-tapes for all months in issue. (Each store kept an envelope for z-tapes for each day.) Instead, the Revenue Department asserts that the z-tapes are unreliable because the Taxpayer's purchases from vendors during the audit period consistently exceeded the Taxpayer's reported sales. However, the Revenue Department informed the Tax Tribunal that it agreed to reduce the final assessments by lowering the purchase mark-up to 20 percent and by removing the fraud penalty and imposing a negligence penalty instead. The Taxpayer rejects the Revenue Department's adjustments and maintains its position that the final assessments should be voided.

Trial Testimony

Mr. Collier testified that he used information from the Taxpayer's daily store summaries to create spreadsheets that were used to prepare the Taxpayer's sales tax returns. Specifically, Mr. Collier stated that each store's daily summary listed sales as taxable or nontaxable and listed the amount of sales tax collected. That information was printed on a form and also listed on an envelope that contained corresponding z-

tapes. Using that information, the Taxpayer's sales tax returns were prepared and filed.

According to Mr. Collier, the Taxpayer owned and operated seven stores when the audit began, four by the end of the audit period, but none by the completion of the audit. Mr. Collier stated that some stores were sold during this period and that some inventory was included in the sales of those stores. In short, Mr. Collier stated that the Taxpayer went out of business and probably lost money every year in which it operated. Further, he testified that the business constantly needed extra cash and that the Taxpayer's owner borrowed money from his parents and grandparents and from a bank, and that the Taxpayer's owner mortgaged his house for additional cash to put into the business. He also noted that the buyers of store inventory did not pay market price; thus, the Taxpayer lost money in those transactions.

Mr. Collier testified that the Taxpayer's z-tapes are accurate as far as the transactions that were processed through the registers. But he acknowledged that z-tape information is a product of those transactions. He also acknowledged on cross-examination that he did not operate the store registers, but that the sales numbers were reported to him. And he agreed that a business's purchases cannot consistently exceed its sales if the business is to continue operating. Mr. Collier also pointed out that the items noted by the Revenue Department that sold for a high-percentage markup were low-volume sales items, such as a local newspaper, and that cigarettes, which were a high-volume sales item, had a very low mark-up. He also stated that a pack of crackers may have been marked up by 35 percent but that a pack sold for only

50 cents.

Mr. Collier concluded by testifying that, although the Taxpayer did a good job of recordkeeping, it did not do a good job of managing its business, especially its cash. When questioned as to where the cash was going, he stated that it was being used to pay bills because vendors had put the business on a cash-only basis. And he stated that employee costs were high.

The Revenue Department's auditor, Ms. Johnson, testified that, in her original audit, she found that the Taxpayer had purchased \$7.6 million of items for resale. Subsequently, however, after receiving subpoenaed information and bank records, she found that the Taxpayer's audit-period purchases totaled more than \$7.7 million. She listed the purchases by month and then compared purchase amounts to the amounts reported by the Taxpayer in sales for the corresponding months. During 2016, for example, the Taxpayer purchased \$220,000 more in items for resale than the Taxpayer reported selling for that year. During 2017, the Taxpayer purchased \$120,000 more than it reported selling. And during 2018, the Taxpayer purchased approximately \$80,000 more than it reported selling. She acknowledged, however, that the amounts on the Taxpayer's z-tapes matched Mr. Collier's worksheets that he used to prepare the Taxpayer's returns. And for July 2017, the Taxpayer reported sales greater than purchases.

Although the auditor believes that the Taxpayer's z-tapes reflect the amounts processed through the Taxpayer's registers, she does not believe that the z-tapes accurately reflect the Taxpayer's total sales. As she stated during trial, "purchases

exceed the sales recorded on those z tapes. And if you didn't sell the inventory you purchased, there would be no need to continue purchases at that same level because you would have unsold inventory that you could sell. Now, if that was just ... a month or two here or there, then I wouldn't have an issue with it because ... that could happen. You ... could ... buy a lot of something one month ..., but for it to have happened consistently over the 36-month period, what happened to the inventory if it wasn't sold?"

She also stated that she could not check the cost of goods sold that should have been reported on the Taxpayer's income tax returns because the Taxpayer did not file those returns. And she stated that she made deductions for inventory that was sold with stores and she made allowances for some amounts of thefts.

In short, Ms. Johnson expressed her belief that the sales on the Taxpayer's z-tapes "could not be correct if you're buying this level of inventory." Further, she stated that the Taxpayer's inventory "was being sold at less than cost every month, but even so, they made enough money to buy more the next month. So where does that come from? I don't know."

Law and Analysis

Alabama taxpayers are required by law to keep accurate and complete records for determining the correct amount of tax due to the State of Alabama. *See* Ala. Code § 40-2A-7(a)(1). In many appeals before the Tax Tribunal, the Revenue Department has argued in favor of the imposition of additional sales tax and/or a fraud penalty where retailers failed to keep contemporary sales records, including z-tapes. *See, e.g. Deva,*

LLC d/b/a Anna's Way v. State of Alabama Department of Revenue, Ala. Tax Tribunal, No. S. 15-1816-JP (Op. and Final Order, Aug. 27, 2020), in which the parties agreed that z-tapes were the best method for determining taxable sales. *See also, Selma Food Mart, LLC v. State of Alabama Department of Revenue*, Ala. Tax Tribunal, No. S. 17-1161-JP (Op. and Prel. Order, September 9, 2020).

Here, however, the Taxpayer kept and produced z-tapes for each and every period of the audit. And the sales amounts recorded on the z-tapes matched the amounts of taxable measure reported on the Taxpayer's corresponding returns filed with the Revenue Department. Also, there is no dispute that the Taxpayer timely paid the amount shown due on each month's return.

Ms. Johnson's concerns regarding the Taxpayer's reporting of retail sales relative to wholesale purchases and regarding inventory are understandable. However, as noted, there was testimony presented to the Tax Tribunal that the Taxpayer borrowed money and sold stores (including inventory) to keep the business operating but that the business eventually ceased to exist. In other words, as referenced generally by Mr. Collier, the Taxpayer's purchasing of inventory in amounts consistently greater than the Taxpayer's sales led to the end of the Taxpayer's business.

The final assessments in issue are declared void. Judgment is entered accordingly.

This Final Order may be appealed to circuit court within 30 days, pursuant to Ala. Code § 40-2B-2(m).

Entered September 30, 2025.

/s/ Jeff Patterson

JEFF PATTERSON

Chief Judge

Alabama Tax Tribunal

jp:ml

cc: William K. Diver, Esq.
Lil Steves, LLC
Hilary Y. Parks, Esq.