ALABAMA TAX TRIBUNAL

PERRIN AND SON, INC.,	§	
Taxpayer,	§	DOCKET NO. S. 24-0825-RC
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER ON APPLICATION FOR REHEARING

This case regards the Alabama Department of Revenue (the "Department") having issued a final assessment of sales tax, entered on October 30, 2024, in the amount $390,819.18 (the "Final Assessment") against Perrin and Son, Inc., an Alabama business corporation (the "Taxpayer"). The Tribunal entered its Opinion and Final Order on August 13, 2026 (the "Final Order"). The Taxpayer filed its Taxpayer's Application for Rehearing on August 26, 2026. The Tribunal granted that Application for Rehearing in part on September 1, 2026, and directed the Department to identify the month referred to in the Confidential Audit Report (the "CAR") when the examiner wrote "[a] waiver is not required for this examination because the taxpayer has omitted more than 25% from the taxable base for the majority of the audit period, <u>except one month</u>." (emphasis added).

The Department responded on September 17, 2026, as follows: "[t]he reference is not discussing the amount of the underreporting calculated using the bank statements and audit method. It is discussing the examiner's initial review of the Taxpayer's own records." And, later, "[o]nce reviewed, additional taxable sales were calculated showing the Taxpayer was significantly underreporting by more than 25% for every month of the audit. … Using the audit method with the actual sales calculation, there was not a month in which the underreporting was less than 25%."

The Taxpayer responded to the Department's filing described above, also on September 17, 2026. The Taxpayer objected to this response on the basis that the Department had not, in fact, identified the month to which the examiner referred in the CAR. The Taxpayer further objected on the basis that the Department's position was an attempt to retroactively change the CAR. The Taxpayer argues that either the CAR was correct, in which case it should comply with the Tribunal's direction to identify the month in question and the amount of the Final Assessment to which it relates; or, alternatively, the CAR was incorrect, and the error should call into question the validity of the Department's invocation of the 6-year statute of limitations provided by Ala. Code (1975), § 40-2A-7(b)(2)b.

This case and every case before the Alabama Tax Tribunal are decided on their merits, to the maximum extent possible under the law. The intent of the Tribunal is "to allow substantial justice and a fair and complete resolution of all matters in dispute." ALA. ADMIN. CODE, r. 887-X-1-.01. While an error in a CAR or similar Department document or report may have significance in pre-trial proceedings, once the case has been tried the Tribunal is entitled to base its decision on all the evidence introduced, whether that evidence conforms to or departs from the statements made in a party's Notice of Appeal or the Department's Answer and subsequent pleadings.

This is an explicit feature of the rules governing the Tribunal's procedures. Ala.

Code (1975), § 40-2B-2(k)(6) states as follows:

> The notice of appeal and other pleadings in the proceeding <u>shall be deemed to conform to the proof presented at the hearing</u>, unless a party satisfies the Alabama Tax Tribunal that presentation of the evidence would unfairly prejudice the party in maintaining its position on the merits or unless deeming the taxpayer's notice of appeal to conform to the proof would confer jurisdiction on the Alabama Tax Tribunal over a matter that would not otherwise come within its jurisdiction.

<u>Id</u>. In practice, this means that a party's pleadings are automatically treated as though they include all issues and evidence actually presented at the hearing, without requiring a formal motion or amendment, unless doing so would unfairly prejudice the opposing party on the merits or would improperly expand the Tribunal's jurisdiction. This rule is different than the corresponding rule affecting practice in Circuit Court (Ala. R. Civ. P. r. 15(b)), where a motion to alter the pleadings is provided for and is to be granted liberally. It also differs from the rules of the United States Tax Court, T.C. Rule 41(b), which is substantively similar to the Alabama rule.

In this case, the evidence adduced at trial supported the Department's assertion that an omission from the taxable base of greater than 25% occurred in each month under audit. Any statements to the contrary in the CAR, which was incorporated into the Department's Answer by reference, are deemed to conform to that evidence. That conformance does not unfairly prejudice the Taxpayer; the Taxpayer was aware from the beginning of the audit that all the months in question were being reviewed. Indeed, the Taxpayer could not possibly have been unfairly surprised by the inclusion of a particular month as it was unaware which month, exactly, the Department meant. Neither does that conformance endow the Tribunal with jurisdiction that it otherwise would have lacked. The six-year statute of Ala. Code (1975), § 40-2A-7(b)(2)b authorizes the Department to enter final assessments it might otherwise be unable to enter lawfully. Even where such a final assessment might have been unlawfully entered, however, that would not deprive the Tribunal of jurisdiction to hear a taxpayer's appeal of that final assessment, so long as the other procedural requirements are met.

The Taxpayer's objections to the Department's response are hereby overruled. Any and all outstanding motions not hereby disposed of are denied. For the reasons noted above and in previous orders, the Final Assessment of October 30, 2024, in the amount $390,819.18, is hereby AFFIRMED, plus additional interest that shall have accrued and shall continue to accrue through the date of payment.

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

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Entered September 23, 2026.

/s/ *Ralph M. Clements, III*
RALPH M. CLEMENTS, III
Associate Judge
Alabama Tax Tribunal

cc: Robert Mayeri, Esq.
Hilary Y. Parks, Esq.