ALABAMA TAX TRIBUNAL

CASA MEXICANA RESTAURANT, INC.,	§	
	§	
Taxpayer,	§	DOCKET NO. S. 25-0137-LP
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

OPINION AND FINAL ORDER

This appeal concerns final assessments of State and local sales tax for the period January 1, 2020, through July 31, 2023, entered by the Department of Revenue (the "Department") against the Taxpayer Casa Mexicana Restaurant, Inc. A hearing was conducted on February 26, 2026. Ryan Corley represented the Department, and Sherrie Johnson testified on behalf of the Department. Kathryn Gentle and Eddie Johnson represented the Taxpayer. Two owners of the Taxpayer, Isac Ornelas and Bennie Ornelas appeared. Allison Stack Blair and Van Stack, CPAs for the Taxpayer, also appeared.

The Department entered the final assessments against the Taxpayer for State sales and local tax on January 31, 2025, for the tax period January 1, 2020, through July 31, 2023. The final assessments included tax, interest, and fraud penalty, totaling $118,433.72 for the State and $82,049.51 for the City of Muscle Shoals. The Taxpayer appealed the final assessments to the Tax Tribunal.

FACTS

The Taxpayer operates a Mexican restaurant in Muscle Shoals, Alabama. The Department conducted an audit for the period January 1, 2020, through December 21, 2022, for State sales tax and local tax for the City of Muscle Shoals. The Department determined that the sales journals provided by the Taxpayer were not complete or reliable records of sales. In May of 2023, the Taxpayer implemented a new cash register system that maintained more details than the previous system. The Taxpayer agreed to provide samples of then-current sales to determine the accuracy of the sales journals.

The Department ultimately conducted an indirect audit using a cash-to-credit ratio method to determine the Taxpayer's liability. That method utilized the Taxpayer's then-current records as well as audit-period records previously provided to the Department. The Department determined a cash-to-credit ratio of 31% to 69%. The Department also discovered overcollection of tax at various rates, underreporting, and evidence of fraud. The audit period was extended through July 31, 2023.

The Department selected the Taxpayer for audit and requested all records used to calculate the sales tax return. Ms. Johnson, the Department's examiner, testified that she received and reviewed general ledgers, purchase records, a monthly sales journal, check register stubs, bank deposit tickets, and bank statements.

Ms. Johnson determined that the cash-to-credit sales ratio (the "cash ratio") was very low compared to similar restaurants in the same area. Additionally, the sales

journal did not record the tax collected on cash sales; thus, she was unable to determine whether the sales figure included tax or what rate of tax was collected, if any. The journal included columns for cash paid out for purchases and cash deposited in the bank. The Taxpayer also provided signed receipts for credit card sales. The receipts did not include a breakdown of tax applied.

Ms. Johnson testified that several audit methods were considered as different information was provided by the Taxpayer. To determine the assessment, the examiner ultimately used the actual sales that occurred at the restaurant substantiated by the sales tickets provided by the Taxpayer. Because the examiner used actual sales records for the audit, she did not account for waste, spoilage, or theft.

Ms. Johnson testified that the typical cash ratio of sales for this type of restaurant is around 30%. Upon observing a 3% cash ratio for the Taxpayer, she questioned the Taxpayer's records.

Ms. Johnson testified that she was told that the servers are paid out tips in cash at the end of the night for tips charged on credit cards. While she did not question the practice, she did notice that the ledgers did not show sufficient cash on hand to pay out the tips each night.

The examiner also testified that the industry standard food cost for restaurants is around 30% of the price of the menu item, although a restaurant could have success with up to a 50% food cost. However, "restaurants strive for what they call the 'rule of 3,' 30 percent to your food cost, 30 percent to your employees, 30 percent for your

overhead, to arrive at a profit of hopefully 10 [percent]; but most of them fall within a 3, 4, 5 percent profit." (Transcript, p. 21-22, l. 24 – l. 4). During her examination of the sales journal of the Taxpayer, Ms. Johnson observed a food cost percentage of 70 and 80 percent. This observation concerned Ms. Johnson.

Once Ms. Johnson received actual sales receipts from the restaurant, she observed a cash ratio of approximately 30% and determined that the sales journals were not reliable.

The examiner described the ordering process at this restaurant: the server writes down the customer's order on a green ticket, which is part of a numbered pad that may be marked with the server's initials. At the end of the meal, the server takes the green ticket to the clerk who adds up the total on a desk calculator and calculates the sales tax. The desk calculator prints the calculation on calculator tape, which is then stapled to the green ticket. The stapled green ticket and tape is given to the customer to pay. Upon payment, the stapled green ticket and tape is maintained by the restaurant. At the end of the night, the green tickets and tape is added up by location (or server) number as indicated on the tickets. Each location's tickets are bundled with a calculator tape of the bundle's total on top of it. Finally, all bundles are added for a total figure. Additionally, the business will run a batch credit card report at the end of the night or the next morning and staple that report to the credit card authorization slips.

Ms. Johnson was told that the restaurant discards the green tickets with

calculator tape after the final total is determined and transferred to the sales journal.

For the audit, the restaurant delivered the then-current green tickets to the examiner as the green tickets for the audit period had been thrown away. Ms. Johnson examined green tickets and the credit card batch reports for a 55-day period beginning May 28, 2023, and ending July 23, 2023.

Comparison of the credit card sales to the total sales figure reported resulted in a cash ratio of 3%, which Ms. Johnson deemed very low. She then matched the credit card receipts to the green tickets and found that there were bundles of green tickets missing. The green ticket pads included a pre-printed sequential receipt number on each page. The auditor observed that several numbers of green tickets were missing, including blocks of numbers. While the total sales on the supplied green ticket bundles roughly matched the total credit card sales daily, many of the green tickets did not have corresponding credit card receipts. The auditor determined that the green tickets without corresponding credit card receipts represented cash sales, which led her to a determination that the business had a cash ratio of around 31%.

Therefore, the auditor took actual credit card sales and assigned those sales as 69% of total sales. She then calculated the remaining sales as cash sales to reach 100%, giving her a higher total sales figure. Additionally, Ms. Johnson determined that the Taxpayer intentionally removed bundles of green tickets in order to reduce the total amount of sales. Thus, she assessed the 50% fraud penalty. In further support of the fraud penalty, the auditor testified that the Taxpayer did not keep an accounting of

cash received, cash deposited into bank accounts, cash tips, or cash sales. And there was no explanation for the missing green tickets. Also, the auditor's discovery that there were credit card receipts with no corresponding green tickets indicated to her that the green tickets had been purposefully omitted. That omission led to an underreporting of credit card sales in the sales journal.

The auditor also determined that the Taxpayer over-collected tax on some sales. While the Taxpayer's correct sales tax rate was 9%, some sales receipts showed a 9.5% or 9.25% tax rate. However, the Taxpayer did not remit the overcollection to the Department.

In its appeal, the Taxpayer requested that the Department use a purchase markup method to determine sales tax owed. The Taxpayer requested that the purchases from the general ledger and the sales recorded in the sales journal be used for the purchase markup. However, the auditor testified that the general ledger and sales journal were not reliable as her examination showed that parts of the records were not accurate. Nevertheless, Ms. Johnson attempted a purchase markup audit using the then-current menu and prices, estimating costs. That audit resulted in a higher tax liability. Therefore, she did not use that method to calculate the final assessment.

The Taxpayer maintains that the low cash ratio was accurate and that there was no intention to defraud the State. While the Taxpayer brought forth some evidence in an attempt to reconcile the reported sales with the sales journal or sales receipts, the

Taxpayer did not account for the missing green tickets or the credit card sales that were not reported in the sales journal. The Taxpayer's accountant, Ms. Allison Stack Blair, testified on the Taxpayer's behalf. She challenged the auditor's cash ratio of 31%, stating that the restaurant did not do that much business, that the sampling of six days over the audit period was unreasonably low, and that restaurants now have a cash ratio of around 10% because people, especially young people, do not carry cash.

Ms. Blair testified that the Taxpayer paid sales tax on the tips collected via credit card payment. She stated that cash in the register, which was collected from cash sales, was used to pay out credit card tips to the servers at the end of each night. The Taxpayer would receive the credit card deposits (from the credit card companies) a few days after the sales. Those deposits would include tips charged on the credit cards. Because the accountant calculated sales tax on the full amount of the credit card deposits, and the tip amount of the credit card deposit equaled the cash received from cash sales and paid out to the servers, then the amount of those cash sales was included in the taxable measure. Additionally, the cash deposits—representing the remaining cash revenue—were included in the taxable measure. She testified that the missing green tickets from the bundles provided were likely discarded pages that had been soiled by spilled food or drink.

Ms. Johnson, the auditor, maintained that the accountant's method of calculation did not include the sales on all of the green tickets. Additionally, the auditor testified that she removed the tips from the credit card sales in her calculation

of total sales.

Regarding the overcollection of tax on some sales, where the Taxpayer charged more than 9% sales tax, the Taxpayer concedes that it owes the Department the over-collected amounts.

LAW AND ANALYSIS

When a Taxpayer fails to provide complete sales records, the Revenue Department may compute the Taxpayer's tax liability "using the most accurate and complete information obtainable." *Jai Shanidev Inc. d/b/a Country Corner,* S. 16-449, at 4 (Ala. Tax Trib. Apr. 27, 2017); Ala. Code § 40-2A-7(b)(1)a. The Department can also use any reasonable method to compute the liability, and the taxpayer, having failed in the duty to keep good records, cannot later complain that the records and/or method used by the Department is improper or does not reach a correct result. *Jones v. CIR,* 903 F. 3d 1301 (10th Cir. 1990); *State v. Ludlum*, 384 So. 2d 1089 (Ala. Civ. App.), cert. denied, 384 So. 2d 1094 (Ala. 1980) (A taxpayer must keep records showing the business transacted, and if the taxpayer fails to keep such records, the taxpayer must suffer the penalty for noncompliance.).

On appeal to the Tax Tribunal, the final assessment of the Department is prima facie correct, and the burden of proving the assessment is incorrect falls on the taxpayer. Ala. Code § 40-2A-7(b)(5)c.3. However, the burden of proof in an assessment of a fraud penalty falls on the Department. Ala. Code § 40-2B-2(k)(7).

> "Ala. Code § 40-2A-11(d) levies a 50 percent fraud penalty for any underpayment of tax due to fraud. The burden of proof in an assessment

> of a fraud penalty falls on the Department. Ala. Code § 40-2B-2(k)(7). For purposes of the penalty, 'fraud' is given the same meaning as ascribed in the federal fraud provision, 26 U.S.C. §6663. Consequently, federal authority should be followed in determining if the fraud penalty applies. *Best v. State, Dept. of Revenue*, 423 So. 2d 859 (Ala. Civ. App. 1982).
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> "The existence of fraud must be determined on a case-by-case basis from a review of the entire record. *Parks v. Commissioner*, 94 T.C. 654, 660 (1990). Because fraud is rarely admitted, 'the courts must generally rely on circumstantial evidence.' *U.S. v. Walton*, 909 F. 2d 915, 926 (6th Cir. 1990). Consequently, fraud may be established from 'any conduct, the likely effect of which would be to mislead or conceal.' Id. The mere under-reporting of gross receipts is itself insufficient to establish a finding of fraud, unless there is evidence of repeated understatements in successive periods when coupled with other circumstances showing an intent to conceal or misstate sales. *Barrigan v. C.I.R.*, 69 F. 3d 543 (1995).
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> "A taxpayer's failure to keep adequate books and records, a taxpayer's failure to furnish auditors with records or access to records, the consistent underreporting of tax, and implausible or inconsistent explanations regarding the underreporting are strong indicia of fraud. See *Solomon v. C.I.R.*, 732 F. 2d 1459 (1984); *Wade v. C.I.R.*, 185 F. 3d 876 (1999)…. Ignorance is not a defense to fraud where the taxpayer should have reasonably known that its taxes were being grossly underreported. *Russo v. C.I.R.*, T.C. Memo 1975-268; *Temple v. C.I.R.*, 67 T.C. 143 (1976)."
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> "Any retailer should know with certainty that sales records must be maintained for audit purposes…."

E&Z, Inc., v. State of Alabama Department of Revenue, 19-989-LP (Ala. Tax Tribunal 1/12/22).

Here, the Department used the Taxpayer's records – the credit card reports and receipts as well as the supplied green tickets – to fulfill its obligation to use the most accurate and complete information obtainable. The Taxpayer lacked records of cash received, cash deposited into bank accounts, cash tips, cash sales, and of tax charged per sale. The auditor utilized a reasonable method to compute the tax liability given

the records provided. Thus, the final assessment of tax is affirmed.

Additionally, the Department assessed the fraud penalty. The evidence indicates that the omission of green tickets and receipts was intentional with the purpose of reducing total sales. Given the evidence provided in this case, I find that the Department met its burden of proof to support the assessment of the fraud penalty. Therefore, the assessment of the fraud penalty is affirmed.

The final assessments of sales tax, interest, and fraud penalty, totaling $118,433.72 for the State and $82,049.51 for the City of Muscle Shoals, are affirmed. Additional interest continues to accrue from the date of entry of the final assessments until the liability is paid in full.

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

Entered October 23, 2026.

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

cc: Kathryn C. Gentle, Esq.
Ryan N. Corley, Esq.