RDS
revenue discovery systems

2317 Third Avenue North, Suite 200
Birmingham, Alabama 35203

800.556.7274 • 205.324.0088 • 205.423.4099 fax
www.revds.com

ADMINISTRATIVE HEARING OFFICER – REVENUE DISCOVERY SYSTEMS

VALLEY VIEW TUBULAR PRODUCTS, INC.

Petitioners

V.

CITY OF RAINSVILLE, ALABAMA,

Respondents,

**FINAL ORDER**

The taxpayer, Valley View Tubular Products, Inc., is an Alabama domestic corporation engaged in the business of manufacturing and selling galvanized steel tubing, a wide array of components, insert material, metal roofing, trim and accessories. The taxpayer maintains a physical business location within the police jurisdiction of the city of Rainsville in DeKalb County, Alabama. The taxpayer was audited by Revenue Discovery Systems ("RDS") on behalf of self-administered jurisdictions throughout the State of Alabama. The audit revealed that the taxpayer was operating and making retail sales within the police jurisdiction of the city of Rainsville and failing to report the gross receipts tax associated with the sales. Additionally, the taxpayer had failed to obtain municipal business licenses for Rainsville in all periods under audit. Preliminary and final assessments were entered against the taxpayer based upon the findings of the audit. The taxpayer timely filed an appeal of the final assessments in accordance with ALA. CODE §40-2A-7(b)(5)a (1975), and a hearing was conducted to review the contested issues.

On appeal, the taxpayer raised several contentions regarding the assessments. First, that Rainsville failed to provide sufficient evidence to support that the business was in fact located within the police jurisdiction of the city, and that even if the city could provide such proof, that the city is barred from assessing the taxes under legal and equitable principles of laches, waiver, and estoppel because they failed to properly advise the taxpayer regarding its location and failed to timely enforce and assess the relative taxes. Second, the taxpayer questioned the legality of the

2317 Third Avenue North, Suite 200
Birmingham, Alabama 35203

800.556.7274 • 205.324.0088 • 205.423.4099 fax
www.revds.com

compensation paid to the city's private examining firm for the auditing services on which the liabilities are based. Lastly, the taxpayer claimed the purported final assessments issued following the audit were invalid because they were not signed by a properly authorized individual referencing the recent Alabama Supreme Court decision of *City of Huntsville v. Colsa Corp.*, 71 So.3d 637 (Ala. 2011).

The taxpayer's appeal states that, upon beginning business, the taxpayer's two principal owners appeared at Rainsville City Hall and met with a city official to inquire about their taxability. The city officials purportedly reviewed a map of Rainsville and advised the taxpayers that they were located outside of the city of Rainsville's taxing boundaries, and were not subject to any of the taxes in question. The taxpayer claims to have relied on the city official's representation throughout the period under assessment, and that based upon such reliance, the city should be prohibited from assessing the taxes throughout the period because the equitable principles of waiver, desuetude, laches, and estoppel stand to bar the enforcement of the tax.

Immediately following the appeal, the city provided a survey map prepared by a professional engineering firm detailing the corporate boundaries of the city of Rainsville. The scale on the map and indicated location of the taxpayer evidenced that the taxpayer was in fact within the police jurisdiction of the city. The taxpayer has not since disputed this issue.

Generally, laches or neglect of duty by governmental officers is no defense to a suit to enforce a matter of public right or protect public interest. *State v. City of Gadsden*, 113 So. 6, 8 (Ala. 1927). If it is to be argued that Rainsville's failure to previously enforce the taxes upon the taxpayer constituted waiver, it must be shown that it was the intention of the city to abandon and give up the right to tax the property, for the right of taxation is essential to the existence of all governments, and it is never presumed that this right is abandoned or surrendered unless it clearly appears that such was the intention. *Stein v. City of Mobile*, 17 Ala. 234, 1850 WL 117 (Ala. 1850). Moreover, a party asserting the doctrine of laches to bar a claim must show that the claim has been so inexcusably delayed that is causes undue prejudice, that any conclusion a court may arise at regarding the claims must at best be speculative, and that the original transactions in issue have become so obscured by the lapse in time, loss of evidence, and death of parties as to render it difficult if not impossible to do justice. *Elliott v. Navistar, Inc.*, 65 So.3d 379 (Ala. 2010); *Salter v. Hamiter*, 887 So.2d 230 (Ala. 2004). This is plainly not such a case.

In the present case, it is unclear as to the precise factors which resulted in the delayed enforcement of the tax upon the taxpayer, however, the city's current efforts to correct the mistake are evidence that they had no intention of abandoning or surrendering their right to tax within their police jurisdiction, or regarding the particular taxpayer in question, and no sworn evidence exists to the contrary. It is common knowledge that even the federal government does not audit every taxpayer to ensure that the proper taxes have been paid. Instead, selective audits

RDS
revenue discovery systems

2317 Third Avenue North, Suite 200
Birmingham, Alabama 35203

800.556.7274 • 205.324.0088 • 205.423.4099 fax
www.revds.com

are conducted with the knowledge that most taxpayers will comply with the tax laws of which courts and individuals are bound to take notice, and of which no party can claim ignorance, rather than face possible civil and criminal penalties for violation. *McElrath Poultry Co., Inc. v. State Dep't of Revenue*, 332 So.2d 383 (Ala. Civ. App. 1976). The evidence also fails to support arguments that the lapse of time has obscured the original transactions to a degree which would render it impossible to determine justice. Indeed, the audit revealed with mathematical precision the exact amounts of business receipts subject to tax which was ascertained through examination of the taxpayer's and government's records which were readily available. This finding is reinforced by the fact that the applicable statute of limitations, as established by ALA. CODE § 40-2A-7(b)(2), had not yet run on taxes in question.[1] The doctrine of laches cannot be applied to bar a claim upon which the statute of limitations has not yet expired because it cannot be argued that such a delay has occurred which would give rise to inexcusable or undue prejudice under the law. *Elliott*, 65 So.2d at 387.

But it is further argued that the city should be estopped from correcting their mistake and assessing the tax because the taxpayer was purportedly advised by a city official that they were not responsible for the tax. In the assessment and collection of taxes, the city is acting in a governmental capacity, and it cannot be estopped with reference to these matters based upon erroneous or inconclusive advice given by an employee acting in a governmental capacity. *State v. Maddox Tractor & Equipment Co.*, 69 So.2d 426, 429 (Ala. 1953). Were this not the case, taxing officials could effectively waive the majority of the government's revenue through such actions. The entire structure of our democratic government rests on the premise that the individual citizen is capable of informing himself about the particular policies that affect his destiny. *Atkins v. Parker*, 472 U.S. 115, 131 (1985). For over one hundred years, courts have declared that publicly available laws are sufficient to provide notice of their requirements because, as a matter of public policy, all men are charged with knowledge of the law. *Grayden v. Rhodes*, 345 F.3d 1225, 1239 (11th Cir. 2003). Accordingly, the taxpayer's arguments on this issue, including references to the doctrine of desuetude, are of no legal consequence to this matter.

The taxpayer's concerns regarding the city's compensation to RDS, the private examining firm who conducted the audit on behalf of the city, are adequately addressed by reviewing the publicly available contracts between RDS and Rainsville. The contracts state that that all auditing services shall be billed on a predetermined hourly rate in quarter-hour (.25) increments. The contract further states that "[T]here shall be no contingent fees." These provisions are clearly in accord with the requirements of ALA. CODE § 40-2A-6(a) regarding

[1] While the examination revealed that the taxpayer had never filed a return or remitted taxes to the city of Rainsville, the period assessed under the examination was limited to six years. While Alabama law permits the assessment period to be extended indefinitely if no return is filed as required, the assessment period enforced against the taxpayer was limited to a six-year period, which is applicable when the taxpayer has understated a liability by an amount greater than twenty-five percent. ALA. CODE § 40-2A-7(b)(2)a & b.

RDS
revenue discovery systems

2317 Third Avenue North, Suite 200
Birmingham, Alabama 35203

800.556.7274 • 205.324.0088 • 205.423.4099 fax
www.revds.com

permissible fees paid to private examining firms for examinations of taxpayers' books and records.

A final issue raised in the taxpayer's appeal takes into account the validity of the assessments issued by RDS in consideration of the recent ruling in *City of Huntsville v. Colsa Corp.*, 71 So.3d 637 (Ala. 2011). The taxpayer's appeal states that "the record does not reflect that anyone from the City of Rainsville nor authorized by the City of Rainsville signed and/or properly signed the purported final assessments." The Court in *Colsa* held that, in accordance with ALA. ADMIN. CODE r. 810-14-1-.15(4), the use of a signature stamp, or facsimile signature, absent an accompanying signed summary record of information contained in the final assessment, is insufficient to constitute a valid entry of final assessment under Alabama law. 71 So.3d at 642.

The final assessments in this instance appear to contain an original signature from the designated assessment officer at RDS, Sherrie Dale. The audit file contained copies of said assessments which reflected the signatures as originally signed. Therefore, particular circumstances at issue in the *Colsa* decision do not appear to be prevalent in this instance, nor has this issue been directly raised within the taxpayer's appeal.[2] Alternatively, the taxpayer's appeal seemingly questions the authority of the individual assessment officer who signed the final assessment. The statutory delegation of the authority to enter preliminary and final tax assessments on behalf of self-administered taxing jurisdictions was created in the 1998 Alabama legislative session with the enactment of the Local Tax Procedures ("LTPA") and Local Tax Simplification Acts ("LTSA") of 1998. Act Nos. 98-191 & 98-192, Ala. Acts 1998.

The statutory provisions adopted under the LTSA permit the counties and municipalities in Alabama to levy, administer and collect, or *contract for* the collection of, any tax authorized to be levied by ordinance, resolution, general or local act. ALA. CODE § 11-3-11. § 11-3-11.2, § 11-51-200, § 11-51-201, § 11-51-202, § 11-51-204. Moreover, the LTSA expressly granted counties and municipalities with all rights of enforcement and collections applicable to the Department of Revenue stating that any county or municipality "which elects to administer and collect, *or contract for* the collection of, any local sales and use taxes or other local taxes, shall have the same rights, remedies, power and authority, including the right to adopt and implement the same procedures, as would be available to the Department of Revenue if the tax or taxes were being

[2] It is notable to mention here that the decision reached by the Alabama Supreme Court in the *Colsa* case resulted only in the voiding of the final assessment, and dismissal of the suit for lack of subject matter jurisdiction. The court was without grounds to issue a judgment which could void the preliminary assessment or otherwise affect any relevant amount of tax deficiency determined under the audit. The issuance of a preliminary assessment, regulated by ALA. ADMIN. CODE r. 810-14-1-.09, which establishes the initial determination of deficiencies determined through the examination, is not subject to the same formal regulations required for the entry of a valid final assessment. Nonetheless, the preliminary assessment establishes the applicable audit period and stays the tolling of the applicable statute of limitations on the periods under the assessment from the date of entry. Alabama law places no limitation on the timeframe between entry of a preliminary and a final assessments, and therefore, even if a final assessment were determined to be invalid as the result of defects in its execution, there would be no prohibition against the subsequent entry of a final assessment which cured the defects invalidating the original. ALA. CODE § 40-2A-7(b)(1) though (5).

2317 Third Avenue North, Suite 200
Birmingham, Alabama 35203

800.556.7274 • 205.324.0088 • 205.423.4099 fax
www.revds.com

administered, enforced, and collected by the Department of Revenue." ALA. CODE § 11-3-11.2(b) & § 11-51-203(a). The LTSA proceeded to define the local taxing jurisdictions by amending the Alabama Taxpayers' Bill of Rights ("TBOR") under ALA. CODE § 40-2A-3(17):

> (20) SELF-ADMINISTERED MUNICIPALITY OR COUNTY.
> A county or municipality that administers its own sales and use taxes or other local municipal or county taxes levied or authorized to be levied by general or local act, or ***contracts out ALL or PART of that function to private auditing or examining firm.*** (emphasis added).[3]

Furthermore, in passing the LTPA, the legislature expressly granted self-administered jurisdictions the ability to contractually delegate the authority to enter tax assessments under the TBOR. Section 40-2A-13(b) of the TBOR explicitly provides that "[A]dditional sales, use, rental, or lodgings tax may be assessed by the Department of Revenue, a governing body of a self-administered county or municipality, ***or an agent of such municipality or county*** within the applicable period allowed pursuant to Section 40-2A-7(b), even though a preliminary or final assessment has previously been entered by the Department of Revenue, a governing body of a self-administered county or municipality, ***or an agent of such municipality or county*** against the same taxpayer for the same or a portion of the same tax period." The express language used by the legislature in enacting this statute clearly empowers private examining or auditing firms with the authority to enter both preliminary and final assessments as the contractual agent of the self-administered taxing jurisdictions.[4]

The final assessments at issue were entered and signed by the assessment officer at RDS, the authorized agent of the taxing jurisdictions under the above mentioned statutory and contractual authority. The assessments indicate that all formal requirements necessary for the effective entry of a final assessment under ALA. ADMIN. CODE r. 810-14-1-.15 have been met. Therefore, the taxpayer's arguments asserting that the final assessments were invalid or ineffective must also fail.

For reason provided herein, it is the opinion of this hearing officer that the final assessments entered against the taxpayer lack the requisite foundation for equitable relief under these circumstances. Additionally, no sufficient evidence has been set forth which would require the voiding of the final assessments due to ineffective entry. Therefore, the final assessments entered against the taxpayer are due to upheld in their entirety based upon the findings in this appeal.

---

[3] *see also* ALA. CODE § 11-51-90.1(5) defining a "Designee" as "An agent of a taxing jurisdiction authorized to administer or collect, or both, the jurisdiction's business license taxes, which may include another taxing jurisdiction, the Department of Revenue, or a "private auditing or collecting firm" as defined in Section 40-2A-3."

[4] *see also* ALA. CODE § 40-2A-14(b)(2) providing "Void any assessment or proposed assessment issued by the self-administered county or municipality or its agent as a result of any examination conducted, in whole or in part, by the examiner."

RDS
revenue discovery systems

2317 Third Avenue North, Suite 200
Birmingham, Alabama 35203

800.556.7274 • 205.324.0088 • 205.423.4099 fax
www.revds.com

An application for rehearing on this Final Order may be filed by the taxpayer or the taxing jurisdiction within fifteen (15) days from date of entry as authorized by ALA. CODE § 40-2A-9(f). This Final Order may be appealed to the circuit court within thirty (30) days in accordance with ALA. CODE § 40-2A-9(g).

Entered this 19th day of January, 2012

Jonathan V. Gerth, Esq.