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REVENUE DISCOVERY SYSTEMS – ADMINISTRATIVE LAW DIVISION

SLOAN SUPPLY CO, INC.,)
)
 Petitioners,)
)
 v.)
)
CITY OF WARRIOR, AL,)
)
 Respondents,)

RDS PID No. 23769

FINAL ORDER

An examination of the books and records of the taxpayer, Sloan Supply Co., Inc., a domestic Alabama corporation located at 1695 Warrior Jasper Road, Warrior, AL 35180, spanning taxable periods from April 2010 through March 2013 was conducted for compliance with sales and use tax laws by Revenue Discovery Systems (hereinafter “RDS”) as agent and designee of self-administered counties and municipalities in Alabama. The taxpayer makes both wholesale and retail sales from its location and routinely collects and remits State of Alabama and Jefferson County sales and use tax thereon. The examiner determined from available evidence that the taxpayer was also located within the police jurisdiction (“PJ”) of the City of Warrior, AL (“City”), and thus assessed sales and consumer’s use taxes on all taxable sales and transactions occurring throughout the audit period based upon the applicable tax rates for the City’s PJ.

The taxpayer timely filed an appeal from the final assessments pursuant to ALA. CODE § 40-2A-7(b)(5)a which were entered as a result of the examination, and a hearing was conducted on March 19, 2014. The taxpayer was represented in the hearing by attorney Gregory J. Reid, Esq.

On appeal, the taxpayer contends that they are not located within the corporate limits or PJ of the City, and are thus not subject to the taxes in question. Additionally, the taxpayer’s written appeal asserts: (1) that it received no explanation of the basis for the assessment from RDS; and (2) makes reference to its tendency to sell items at wholesale which are tax exempt; absent further reference to any specific adjustments to the audit results which are necessary and related thereto.

Municipalities are authorized by ALA. CODE § 11-51-200(a) to provide by ordinance for the levy and assessment of sales and use taxes, and may levy and assess such taxes within the police jurisdiction of said municipality pursuant to ALA. CODE § 11-51-206, provided said levy does not exceed one-half of the amount levied and assessed for like businesses, sales or uses conducted within the corporate limits, fees and penalties excluded. Upon passing any ordinance of a general or

permanent nature, the municipality is required to publish such ordinance in some newspaper of general circulation in the municipality, but if no such newspaper is published in the municipality, such ordinances may be published by posting a copy of the ordinance in three public places within the municipality, one of which shall be the mayor's office in the city or town. ALA. CODE § 11-45-8(b)(1). It is further provided that all such ordinances shall take effect from and after the time it shall first appear in the newspaper, or if published by posting, five days thereafter. *Id.* at (b)(3).

In this instance, the City passed Ordinance No. 2009-04 levying a sales and use tax at one-half the rate within the corporate limits on December 7th, 2009 by vote of the council, and further published the Ordinance by posting copies thereof in four conspicuous places within the City, including: (1) the Mayor's office; (2) the Post Office; (3) the City Hall Annex; and (4) the Library. Such publication was certified and attested to by the City Clerk on December 8th, 2009. The City subsequently, by letter dated December 23, 2009, amended the effective date of the tax to February 1, 2010, and again amended said effective date to April 1, 2010 by letter dated January 29, 2010, which was dispatched by RDS on that date to all businesses known to be operating in the PJ at that time. It is unclear from the present facts and evidence whether the taxpayer received a copy of the written notice from RDS or the City.

The taxpayer remains resolute that they are not located within the one and one-half mile PJ of the City. Subsequent to the enactment of the Ordinance, the taxpayers engaged the City on several occasions inquiring as to their exact whereabouts within the taxable boundaries, and were notified on several such instances that the City believed them to be located within the PJ, and thus subject to its taxes. The taxpayer continues to dispute the City's inference, and has since failed to collect and remit the City's taxes levied pursuant to the Ordinance effective April 1, 2010. The taxpayer further stated in the hearing that even if they were located within the City's PJ, they have never been provided with sufficient notice and as to such, and thus should not be subjected to enforcement of the taxes levied therein.

Notably, during the course of the examination, one RDS auditor notified the taxpayer on or about December 2012 that he did not believe them to be within the PJ based upon his personal assessment of their distance from a particular City limit sign. This assessment was subsequently revoked by another RDS auditor in January of 2013 who concluded them to be well within one and one-half miles of the City limits evidenced by maps provided by the City (Respondent's Exhibit # 1), the Jefferson County Tax Assessor's Mapping Division (Respondent's Exhibit # 2), and by Carto-Craft Maps, Inc. (Respondent's Exhibit # 3), all of which clearly indicate that the taxpayer's location is within the City's PJ by measurement from the corporate boundaries.

Alabama law provides that on appeal from a final assessment of tax, whether to the circuit court or the administrative hearing officer/law judge, the final assessment shall be prima facie correct, and the burden of proof shall be on the taxpayer to prove the assessment is incorrect. ALA. CODE § 40-2A-7(b)(5)c.3. The taxpayer did not provide any map, measurement, or otherwise which would contradict the maps entered into the record, nor was any other evidence submitted to support a conclusion that the taxpayer is not located within the City's PJ. Accordingly, the taxpayer has not met its burden of establishing that the final assessments are erroneous, and it is hereby concluded that their location at 1695 Warrior Jasper Road is within the PJ of the City, and thus subject to the taxes levied therein.

As to notice, the publication or posting of an ordinance as required by law serves as notice, and no further notice, including to those affected by the ordinance, is required under Alabama law.

Town of Westover v. Bynum, 103 So.3d 827 (Ala. Civ. App. 2012). Notice of such an ordinance is required to be taken by anyone upon whom it has a binding effect, analogous to the rule that all citizens are charged with knowledge of the law. *Id.* While it is notable that no city limit or police jurisdiction signs are posted near the taxpayer's location, actual notice is not required under Alabama law in order to subject a taxpayer to a duly enacted ordinance's exaction, rendering any arguments surrounding the effective notice to the taxpayer legally inconsequential.

Regarding the taxpayer's contentions as to receipt and explanation of the basis for the taxes assessed, the record reflects that the taxpayer was provided written copies of the audit work papers, which were quite thorough, and that said work papers were reviewed and explained to the taxpayer and its accountant prior to the issuance of any assessments. See City of Warrior Answer at # 2. This assertion was not contested in the hearing. Accordingly, these written reports, schedules, and personal explanations from the auditor are sufficient to satisfy the statutory requirements of ALA. CODE § 40-2A-4(a)(3)a to provide in simple and non-technical terms the basis for the assessment and any penalty asserted.

Finally, the taxpayer's reference in the written appeal to wholesale sales upon which no tax should be collected is without sufficient evidence and specificity to overcome its burden of proof that the assessments are erroneous and contain nontaxable wholesale transactions. The auditor testified that many of the scheduled transactions subjected to tax were based upon the taxpayer's monthly filings and remittances with the State and the County for the same periods, and further corresponded to an audit conducted by the State Department of Revenue with overlapping periods, with the addition of a few transactions which were deemed taxable by the auditor and previously not reported. Hence, no adjustments are warranted in this regard based upon the evidence submitted.

Based upon the foregoing, the final assessments entered against the taxpayer are due to be upheld. Judgment is entered against the taxpayer for sales tax, penalty and interest in the amount of \$108,449.41, and consumer's use tax, penalty and interest in the amount of \$2,710.55, with additional interest accrued thereon until payment is made.

This Final Order may be appealed to the circuit court within 30 days pursuant to ALA. CODE § 40-2A-9(g). Alternatively, the taxpayer or the taxing authority may file an application for rehearing with the RDS administrative law division within 15 days pursuant to ALA. CODE § 40-2A-9(f).

Entered April 15, 2014

Jonathan V. Gerth, Esq. _____
Administrative Law Judge