

JAI SHANIDEV INC  
DBA COUNTRY CORNER  
101 SHADY GROVE RD  
PIEDMONT, AL 36272-1011,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA  
ALABAMA TAX TRIBUNAL

DOCKET NO. S. 16-449

### FINAL ORDER

The Revenue Department assessed Jai Shanidev, Inc. ("Taxpayer"), d/b/a Country Corner, for State sales tax for June 2012 through April 2014. The Taxpayer appealed to the Tax Tribunal pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on March 7, 2017. Neil Patel, the Taxpayer's owner at the time of the hearing and during the last few months of the audit period, attended the hearing. Steve Baker represented the Taxpayer. Assistant Counsel Ralph Clements represented the Department.

The Taxpayer operated a convenience store known as Country Corner in Piedmont, Alabama during the audit period at issue.

The Department audited the Taxpayer for the period at issue and requested all the Taxpayer's bank records and sales tax-related records. The Taxpayer provided the following records for the period of January 2014 through April 2014: cash register z-tapes, cash register receipts for food stamp sales, cash register receipts for debit and credit card sales, purchase invoices, cancelled checks and bank statements. Limited documentation was provided for the latter months of 2013. Patel indicated to the Department examiner that the previous owner of the Taxpayer did not provide him with any records. Attempts by

both the Department and Patel to obtain additional records were unsuccessful.

The examiner determined that the Taxpayer's records were insufficient to allow the examiner to determine the Taxpayer's liability for the audit period. Specifically, the Taxpayer only provided records for the last few months of the audit period and the taxable sales from the cash register receipts provided by Patel showed that only 56% of taxable sales were reported on the Taxpayer's sales tax returns. The examiner consequently conducted a purchase mark-up audit to arrive at the Taxpayer's estimated gross receipts.

Simply stated, a retailer's sales tax liability is computed through a purchase mark-up audit by determining the retailer's wholesale purchases, and applying a reasonable retail mark-up percentage to determine the retailer's estimated retail sales. The sales tax due is computed on those estimated sales. A credit for sales tax previously reported and paid is then allowed to arrive at the additional sales tax due.

In this case, the examiner determined the Taxpayer's wholesale purchases during the period using the limited purchase invoices provided by the Taxpayer and purchase invoices obtained from the Taxpayer's beer and dairy vendors, the Taxpayer's primary vendors. The examiner compared the Taxpayer's purchases from its dairy and beer vendors to the information provided by the Taxpayer regarding its purchases from other types of vendors. The examiner determined that beer and dairy purchases constituted approximately one-fourth of the Taxpayer's total purchases in the months of November 2013 through April 2014. Using that information, the examiner estimated the Taxpayer's total purchases in the months of November 2013 through April 2014, and applied the monthly average to the entire audit period to determine the Taxpayer's total purchases.

The examiner compared the purchases with the Taxpayer's cash register z-tapes to determine that the Taxpayer's approximate average mark-up percentage was 33.46%. To further insure that the markup percentage was reasonable, the examiner compared it to the IRS markup percentages for food and beverage stores and gas stations and determined that the markup percentage was in line with the IRS markup percentages. The markup percentage was applied to the Taxpayer's estimated retail sales for the audit period. The examiner then applied the four percent State sales tax rate to determine the total tax due, and a credit was allowed for sales tax previously paid to determine the additional tax due.

The Taxpayer requested a waiver of the penalties assessed and asserted at the hearing that the Department's audit was unreasonable because the examiner only used a few months of incomplete records to determine the Taxpayer's total purchases and retail sales for the entire audit period. Patel asserted at the hearing that the last months of the audit period did not accurately reflect the Taxpayer's purchases and sales in the other months of the audit period. Additionally, Patel stated that when he took over management of the store, a significant amount of purchases were made in the later months of the audit period to restock the store.

All retailers subject to Alabama sales tax are statutorily required to keep complete and accurate sales, purchase, and other records from which their correct sales tax liability can be computed. Code of Ala. 1975, §§40-2A-7(a)(1) and 40-23-9. A retailer's duty to keep sales records is straightforward and simple. It is commonly understood that such records must be maintained to allow the Department to verify that the correct amount of sales tax has been reported and paid.

The Taxpayer in this case admittedly failed to provide complete sales records. In such cases, the Department is authorized to compute a taxpayer's correct liability using the most accurate and complete information obtainable. Code of Ala. 1975, §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).

The purchase mark-up audit is a simple, oft-used Department method of determining a taxpayer's sales tax liability when the taxpayer fails to keep accurate sales records. See generally, *GHF, Inc. v. State of Alabama*, S. 09-1221 (Admin. Law Div. 8/10/10); *Thomas v. State of Alabama*, S. 10-217 (Admin. Law Div. O.P.O. 5/18/10); *Alsedeh v. State of Alabama*, S. 03-549 (Admin. Law Div. 11/3/04). Because the Taxpayer in this case failed to maintain adequate records from which its sales could be accurately computed or verified, the Department examiner correctly conducted a purchase mark-up audit to reasonably compute the Taxpayer's liability for the audit period. The tax due as computed by the audit is by its nature an estimate, but the examiner of necessity estimated the Taxpayer's liability because the Taxpayer failed to maintain adequate records.

The Taxpayer may be correct that the examiner over-estimated the Taxpayer's purchases and retail sales for the audit period, but if the Taxpayer had maintained complete and accurate records, there would have been no need for the examiner to

compute the estimated purchases and sales. Patel's assertion that the purchases in the later months were greater than the purchases made during the audit period cannot be relied upon because he cannot substantiate the purchases for most the months in the audit period. Further, by his own admission, he does not know the Taxpayer's purchases or sales amounts prior to January 2014, the month he acquired the Taxpayer. As discussed, because the Taxpayer failed to maintain good records, as required by Alabama law, it cannot now complain that the Department's computations must be rejected as inexact estimates.

The Department's audit was properly conducted using the best information available. The negligence penalty is waived. The final assessment, less the negligence penalty, is accordingly affirmed. Judgment is entered against the Taxpayer for tax, late payment penalty, and interest of \$33,058.25. Additional interest is also due from the date the final assessment was entered, March 11, 2016.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2B-2(m).

Entered April 27, 2017.

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CHRISTY O. EDWARDS  
Associate Tax Tribunal Judge