CRESTMONT LLC D/B/A QUALITY HOTEL & SUITES 317 MAGAZINE STREET NEW ORLEANS, LA 70130-7400,	§ §	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
Taxpayer,	§ §	DOCKET NO. S. 06-871
v.	§ §	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

PRELIMINARY ORDER HOLDING CASE IN ABEYANCE

The Revenue Department assessed Crestmont, LLC, d/b/a Quality Hotel & Suites, ("Taxpayer") for local lodgings tax for the periods 1/31/05, 2/28/05, 3/31/05, 4/30/05, 5/31/05, 6/30/05, 7/31/05, and 8/31/05. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on January 24, 2007. The Taxpayer's representative was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Margaret McNeill represented the Department.

The Taxpayer operates a Quality Inn & Suites in Homewood, Alabama. The Department administers and collects the City of Homewood lodgings tax on behalf of the City. The Homewood City Council passed an ordinance in November 2004 that increased the lodgings tax from 3 percent to 6 percent. The effective date of the ordinance was January 1, 2005.

A lawsuit was filed in Jefferson County Circuit Court challenging the validity of the ordinance. The Circuit Court ruled in January 2005 that the ordinance was invalid. The Court also enjoined the City from collecting the disputed tax.

In January 2005, the Department notified all taxpayers subject to the City of Homewood lodging tax that they should "cease collecting and charging the City of Homewood lodging tax at the 6% rate, and to charge and collect the City of Homewood lodgings tax at the 3 percent rate." The Taxpayer thereafter collected and remitted tax to the Department at the pre-ordinance 3 percent rate.

The City of Homewood appealed the Circuit Court's ruling to the Alabama Supreme Court. In September 2005, the Supreme Court reversed the Circuit Court's decision and held that the 6 percent lodgings tax was valid, effective January 1, 2005. *Homewood v. Bharat, LLC*, ____ So.2d ____, 2005 WL 2403739 (Ala. 2005).

The Department subsequently notified all taxpayers in October 2005 that the additional 3 percent tax was due and valid. It also assessed the Taxpayer in this case for the difference between the 3 percent collected and remitted by the Taxpayer during the subject period, and the 6 percent due under the ordinance.

A similarly situated taxpayer, Residence Inn by Marriott, Inc., has filed a declaratory judgment action in the Jefferson County Circuit Court, CV. 200607363. The action challenges the assessment and/or collection of the additional 3 percent Homewood tax. This appeal will accordingly be held in abeyance pending the outcome of that case. The Department should notify the Administrative Law Division when the Jefferson County Circuit Court action has been finally decided. Appropriate action will then be taken.

Entered January 25, 2007.

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BILL THOMPSON
Chief Administrative Law Judge

bt:dr
cc: Margaret Johnson McNeill, Esq.
David Levy
Myra Houser
Joe Cowen