SHAMROCK & SONS ENTERPRISES, INC., d/b/a VILLAGE SPIRITS 501 32ND STREET SOUTH BIRMINGHAM, AL 35233,	§ §	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
Taxpayer,	§ §	DOCKET NO. S. 10-281
v.	§ §	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER ON TAXPAYER'S SECOND APPLICATION FOR REHEARING

This appeal involves a final assessment of State sales tax for May 2005 through September 2008 entered against the above Taxpayer. A Final Order was entered on July 26, 2012. The Taxpayer timely applied for a rehearing and raised several objections, including the fact that the Department did not back the sales tax out of the bank deposit amounts before computing the taxable measure.

The Department responded that it did not back out the sales tax because the Taxpayer had failed to disclose a bank account during the audit, and had also failed to prove that it had in fact collected sales tax from its customers. The Administrative Law Division subsequently entered a Final Order on Taxpayer's Application for Rehearing on October 29, 2012 affirming the July 26, 2012 Final Order.

The Taxpayer timely applied for a second rehearing, and a hearing was conducted on January 31, 2013. Steven Schniper represented the Taxpayer. Assistant Counsel Christy Edwards represented the Department.

The Taxpayer's representative asserted at the January 31 hearing that the Taxpayer had provided the Department with full access to the two bank accounts used by the Taxpayer's business, a money market account and a general operating account. The

representative explained that after the audit, the Taxpayer provided additional information showing a deposit into one of the business accounts from a third bank account. Because the deposit showed that the transfer was from a business account to a business account, the Department assumed that the Taxpayer had another business account that it had failed to divulge during the audit. The Department consequently refused to back the sales tax out of the deposits because it suspected that the Taxpayer had also deposited some of its sales receipts into the previously undisclosed third account.

The Taxpayer's representative explained at the January 31 rehearing that the previously undisclosed account is the personal account of the Taxpayer's owner and his wife, and that the personal account was not used for business purposes. The owner also explained that the transaction involving his personal account occurred because he personally borrowed $10,000 to pay an unrelated business liability. He put the $10,000 into his personal account, but that because he could not wire the money from his personal account, he deposited the money into the business account and then wired it. He testified that there were no deposits into the personal account from the business, nor were there any other transfers from his personal account to the two business accounts other than the one $10,000 transfer.

The Department conceded that in a bank deposit sales tax audit, sales tax is usually deducted or backed out of total deposits in computing the taxable measure. The Taxpayer and his representative adequately explained and presented evidence at the January 31 hearing showing that the account in issue was the owner's personal account, and that other than the one transaction discussed above, the account was unrelated to the

Taxpayer's business.

The Department was directed to follow its normal procedures and back out the sales tax from the deposits in computing the taxable measure. A copy of the Department's response is enclosed with the Taxpayer's copy of this Order.

The Department indicates that the final assessment should be reduced to $5,424.78. Judgment is entered accordingly. Additional interest is also due from the date the final assessment was entered, February 10, 2010. The July 26, 2012 Final Order is voided.

This Final Order on Taxpayer's Second Application for Rehearing may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered April 24, 2013.

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BILL THOMPSON
Chief Administrative Law Judge

bt:dr
cc: Christy O. Edwards, Esq.
Stephen H. Schniper (w/enc.)
Joe Walls
Mike Emfinger