J & M FAST FOODS OF ALA., INC. 510 N. 3RD STREET CITRONELLE, AL 36522-0307,	§ §	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
Taxpayer,	§	DOCKET NO. S. 11-586
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER

The Revenue Department assessed J & M Fast Foods of Alabama, Inc. ("Taxpayer") for State and local sales tax for March and April 2011, and for September, October, and December 2010. 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 July 2, 2012. Judy Belk represented the Taxpayer. Assistant Counsel Duncan Crow represented the Department.

The Taxpayer has operated fast food restaurants in Southwest Alabama since 1986. The Taxpayer hired a new bookkeeper/tax preparer in January 2006. The bookkeeper erroneously reported the Taxpayer's gross receipts as the taxable measure on the Taxpayer's State and local sales tax returns from January 2006 through May 2010. She should have reported the taxable sales receipts, or gross receipts less the sales tax collected from the customers.

The Taxpayer petitioned for State and local refunds in July 2010 for the amounts overpaid during the period. A Department examiner audited the Taxpayer's records and verified the amount of tax overpaid for the period.

The Department allowed the Taxpayer a credit for the amounts overpaid from July 2007 through May 2010. It disallowed a credit for the amounts (approximately $12,000) overpaid before July 2007 based on the three year statute of limitations at Code of Ala.

1975, §40-2A-7(c)(2)a.

The Taxpayer failed to pay the reported sales tax due for the months in issue, presumably because it believed that it had a credit available from the pre-July 2007 overpayments to satisfy the liabilities. Because the Department had disallowed the pre-July 2007 credits, it assessed the Taxpayer for the tax due for those months, plus penalties and interest.

The Taxpayer's president, Judy Belk, argued at the July 2 hearing that her company had always complied with the State sales tax laws, and that she should not be denied refunds or credits for the tax the company unintentionally overpaid before July 2007.

I sympathize with the Taxpayer, but Alabama law prohibits the Department from issuing refunds or allowing credits after the three year statute of limitations has expired. Section 40-2A-7(c)(2)a. specifies that the Department can allow a refund or credit only if the taxpayer petitions for a refund or credit within three years from when the tax was paid. The Taxpayer petitioned for the refunds/credits in issue in July 2010. Consequently, the sales tax overpaid by the Taxpayer before July 2007 cannot be allowed as a credit against the tax due for the months in issue. The penalties included in the final assessments are waived for reasonable cause.

The final assessments, less the penalties, are affirmed. Judgment is entered against the Taxpayer for State and local sales tax and interest for September and December 2010 in the amounts of $619.19 and $2,438.96, respectively; October 2010 State and local sales tax and interest of $2,421.73 and $564.65, respectively; and March and April 2011 State and local sales tax and interest of $8,733.59 and $7,630.99,

respectively. Additional interest is also due from the date the final assessments were entered, July 14, 2011 concerning the final assessments for September and December 2010; September 6, 2011 concerning the final assessment for October 2010; and October 21, 2011 for the final assessments for March and April 2011.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered July 10, 2012.

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BILL THOMPSON
Chief Administrative Law Judge

bt:dr
cc: Duncan R. Crow, Esq.
Judy M. Belk
Joe Walls
Mike Emfinger