

Tax Assessments: Minimum Evidentiary Foundation Required

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When a taxpayer challenges an assessment issued by a state or local taxing authority, the taxing authority will typically assert that its assessment should be afforded a presumption of correctness, and the burden of proof is on the taxpayer to prove that the assessment is incorrect. While this is typically true, a presumption of correctness can only attach to an assessment if there is a rational basis and minimum evidentiary foundation for the assessment. While this should not be a high bar to cross for state or local taxing authorities, there are nonetheless times when they do not meet even these minimal requirements, and assessments are issued with no rational basis and no minimum evidentiary foundation.

A recent decision by the Alabama Tax Tribunal (“Tribunal”) highlights such an instance where local Alabama taxing authorities issued sales tax assessments that could not even satisfy these minimal requirements, and the assessments were voided without the company or a representative of the company even appearing at the trial. [*VV & Co., LLC v. City of Boaz*](#); Docket No. City 23-1081-LP; *VV & Co., LLC v. City of Albertville*; Docket No. City 23-1082-LP (Ala. Tax Trib. Feb. 3, 2025). While it is never recommended that an appealing company not show up for its trial, the decision is a reminder that state and local taxing authorities are not unrestrained in their authority to issue assessments, and minimum requirements must be satisfied before the burden of proof shifts to a taxpayer to prove that an assessment is erroneous.

The two Alabama localities here engaged a third-party auditor that conducted a “desk audit” of the company that resulted in the sales tax assessments. In its appeal to the Tribunal, the company asserted that it did not do any business in the localities and that it only made wholesale sales of cars, and had no sales tax liability because it made no retail sales. At trial, the auditor from the third-party firm testified and the company did not appear. The auditor testified that the reason for the assessments was that the company had historically filed sales tax returns in the localities (several reporting zero sales), but beginning with the audit period, the company stopped filing returns. The assessments were calculated using estimation techniques based on the amounts reported on the company’s historic sales tax returns. The auditor further testified that neither locality had received any documents from the taxpayer indicating that the company made any sales in the localities during the audit period.

The Tribunal explained that while assessments in Alabama are “*prima facie* correct,” it is also “well

established that the final assessments must be ‘based on a minimum evidentiary foundation.’” The Tribunal also noted that sales tax liabilities may only be estimated if “there is evidence reasonably establishing that the retailer conducted business and made sales during the period.” Finding that the “sole foundation” for the assessments issued by the localities was that the company “had filed tax returns at some point prior to the audit periods in issue but then stopped filing returns,” the Tribunal concluded that such reasoning was “insufficient to justify the final assessments,” and voided the assessments.

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National Law Review, Volume XV, Number 79

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