

IN THE SUPREME COURT OF MISSISSIPPI

**CHANDER PAUL KHURANA,
d/b/a VK QUICK MART and
VK'S WINE & LIQUOR**

APPELLANT/CROSS APPELLE

VS.

NO. 2010-CA-01598

**MISSISSIPPI DEPARTMENT OF
REVENUE**

APPELLEE/CROSS APPELLANT

**ON APPEAL FROM
THE CHANCERY COURT OF PIKE COUNTY, MISSISSIPPI**

BRIEF OF THE APPELLANT/CROSS APPELLEE

(ORAL ARGUMENT REQUESTED)

SUBMITTED BY:

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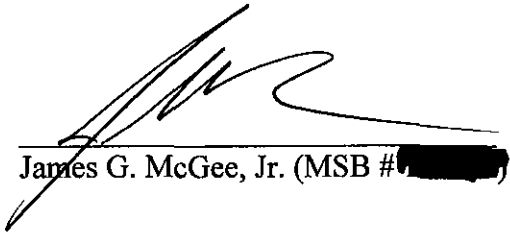
CERTIFICATE OF INTERESTED PARTIES

The undersigned counsel of record certifies that the following listed persons have an interest in the outcome of this case. These representations are made so that the judges of this Court may evaluate possible disqualification or recusal.

1. Hon. Debbra K. Halford, Chancellor, 4th Chancery Court District, P.O. Box 575, Meadville, MS 39653.
2. Chander Paul Khurana, d/b/a/, VK Quick Mart and VK's Wine & Liquor, Appellant/Cross Appellee, 610 W. Presley Blvd, McComb, MS 39648.
3. Mississippi Department of Revenue, Appellee/Cross Appellant, P.O. Box 1033, Jackson, MS 39215-1033.
4. James G. McGee, Jr., Banres, McGee and Associates, P.A., Attorney for the Appellant/Cross Appellee, 5 River Bend Place, Suite A, Flowood, MS 39232-7618.
5. Harris H. Barnes, III, Barnes, McGee, and Associates, P.A., Attorney for the Appellant/Cross Appellee, 5 River Bend Place, Suite A, Flowood, MS 39232-7618.

6. Heather Deaton, Esq., Mississippi Department of Revenue, Attorney for the Appellee/Cross Appellant, P.O. Box 22828, Jackson, MS 39225-2828.
7. Gary W. Stringer, Esq., Mississippi Department of Revenue, Attorney for the Appellee/Cross Appellant, P.O. Box 22828, Jackson, MS 39225-2828.
8. Wren C. Way, Esq., 1001 Locust Street, Vicksburg, MS 29183. (Mr. Way was Appellant/Cross Appellee's trial counsel in the court below, but is no longer an attorney of record).

SO CERTIFIED, this the 30th of March, 2011.


James G. McGee, Jr. (MSB # [REDACTED])

STATEMENT OF ORAL ARGUMENT

This case addresses an issue of vital importance to every citizen of the State of Mississippi, which is: What constitutes adequate records for purposes of Mississippi Code Annotated § 27-65-43? For this reason alone, the Court should grant oral argument. In addition, this is a complex tax case. Therefore, we that oral argument would help clarify the issues. Accordingly, we respectfully request oral argument in this matter.

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I. STATEMENT OF THE ISSUE

Mississippi Code Annotated § 27-65-43 requires taxpayers to maintain “adequate records,” “*including* all invoices of merchandise purchased, all bank statements and cancelled checks, and all other books or accounts as may be necessary to determine the amount of tax for which he is liable.” (Emphasis added). Mr. Khurana owns a convenience store, which generates a substantial portion of its revenues from cashing payroll checks, a nontaxable service. At trial, Mr. Khurana argued, *inter alia*, that he was not given sufficient credit for payroll checks deposited in the store’s account. Mr. Khurana kept bank records showing his deposits, including the payroll checks, but little else. Nevertheless, these records were the best evidence of his check cashing activities. Therefore, did the Chancellor err in holding that Mr. Khurana failed to maintain adequate records?

II. STATEMENT OF THE CASE

A. Nature of the Case and Disposition in the Court Below

This case relates to sales tax assessments made against Chander Paul Khurana, doing business as VK Quick Mart for the periods of November 1, 2002 through November 30, 2005, and against Chander Paul Khurana, doing business as VK's Wine and Liquor, for the periods of December 1, 2004.

This case came before the Court for trial on March 9, 2010. Following the close of Mr. Khurana's case-in-chief, Defendant moved for involuntary dismissal pursuant to Rule 41(b) of the Mississippi Rules of Civil Procedure on the ground that Mr. Khurana failed to present sufficient evidence to rebut the presumption of correctness established by Mississippi Code Annotated § 27-65-37. The Court found that Mr. Khurana failed to maintain adequate records within the meaning of § 27-65-43, and therefore the DOR was entitled to the presumption that its assessment was *prima facie* correct. The Court further found that Mr. Khurana failed to introduce competent evidence to rebut the presumption. Accordingly, the Court granted DOR's motion and dismissed Mr. Khurana's Petition with prejudice.

B. Course of Proceedings and Statement of Relevant Facts

Mr. Khurana is the sole proprietor of VK Quick Mart and VK Wine and Liquor. VK Quick Mart is a convenience store that sells a variety of products, including gas and groceries. A substantial portion of VK Quick Mart's revenue, however, is generated from cashing payrolls. VK Wine and Liquor is a package liquor store that sells a variety of wine and liquor products. Both businesses are located in McComb, Mississippi.

1. Audit and Administrative Proceedings.

In February 2006, the Mississippi State Tax Commission (“MSTC”)¹ initiated sales tax audits of VK Quick Mart and VK Wine and Liquor for the period November 1, 2002 to November 30, 2005, and December 1, 2004 to November 30, 2005, respectively. Following the audits, the MSTC issued proposed assessments against Mr. Khurana with respect to VK Quick Mart and VK Wine and Liquor in the amounts of \$84,783.00 and \$6,858.00, respectively. Mr. Khurana appealed the assessments to the MSTC’s Board of Review. The Board of Review affirmed the assessments. Thereafter, Mr. Khurana appealed to the Full Commission. A hearing was held on June 20, 2007. Following the hearing, the taxpayer’s representative, Michael Mahoney, CPA, submitted additional documentation supporting Mr. Khurana’s position that he was not given sufficient credit for nontaxable sales related to his check cashing activities in connection with VK Quick Mart. The MSTC considered the additional documentation, but made only minor adjustments. On September 14, 2007 the Full Commission issued orders affirming the assessments as amended.

2. Pretrial Proceedings in Chancery Court

On October 4, 2007, Mr. Khurana filed a petition to appeal the Commission’s orders to the Chancery Court of Pike County. Mississippi Code Annotated § 27-77-7(1) (Rev. 2005) states, in pertinent part, that “[t]he findings and order of the commission entered under Section 27-77-5 shall be final unless the taxpayer shall, within thirty (30) days from the date of the order, file a petition in the chancery court appealing the order and pay the tax or post the bond as required in this chapter.” Section 27-77-7(3) requires the taxpayer to either pay the assessment

¹ The Mississippi State Tax Commission or MSTC is the predecessor to the Mississippi Department of Revenue or MDOR.

as affirmed by the Commission's order prior to filing the petition or post bond equal to "double the amount in controversy" in conjunction therewith. Section 27-77-7(4) states, however, that "[t]he chancery court in which a petition under subsection (1) of this section is properly filed shall have jurisdiction to hear and determine said cause or issues joined as in other cases."

Although there's no question that Mr. Khurana's appeal was timely filed, the MDOR moved to dismiss for lack of subject matter jurisdiction on the ground that Mr. Khurana failed to pay the tax or post bond, as required by § 27-77-7(1) and (3). On October 11, 2007, seven days after filing his appeal, Mr. Khurana hand delivered to the MDOR two checks, one in the amount of \$80,930.00, and another in the amount of \$5,062.00, as payment of the assessment. The assessment with respect to VK's Wine and Liquor, however, was \$212.00 short as a result of accrued interest. Nevertheless, the Chancellor found that the defect was curable, and since it was, in fact, cured, dismissal was not required. Thus, after a failed attempt at interlocutory review, the case proceeded to a trial on the merits.

3. Trial Proceedings

At trial, Mr. Khurana attempted to establish that he was not given proper credit for nontaxable sales attributable to his payroll check cashing activities. Because the auditor based the assessments on a cash flow analysis of Mr. Khurana's bank accounts, payroll checks deposited in the account increased the deposits. In a cash flow audit, deposits are used as a proxy for taxable sales. (Ex. 1; T. 55:16-19)² Therefore, nontaxable items must be segregated and removed in order to arrive at a figure that approximates taxable sales. Although much of the testimony related to the effect of checks written to cash and transfers from Mr. Khurana's line of

² Citations to the Record will be labeled (R. at ____). Citations to Record Excerpts will be labeled (R.E. ____). Citations to Defense Exhibits will be labeled (D-Ex. 1). Citations to Transcripts will be labeled (T. ____:____), with the number before the colon representing the page and the number following the colon representing the line on which the cited material appears.

credit with State Bank & Trust on the deposits in the VK Quick Mart account, the real issue is whether Mr. Khurana was given proper credit for payroll checks deposited in the account. To support his position, Mr. Khurana called himself and three other witnesses: the Commissioner's auditor, Ryan Smith, who testified as an adverse witness, Shawn Lowery, the Branch Manager of State Bank and Trust Company ("State Bank") in McComb, Mississippi, and Michael Mahoney, CPA, who testified as an expert witness.

Mr. Khurana testified that he began his check cashing business in 1991. (*See generally* T. 74:9-89:29.) To sustain the liquidity needed to maintain his operations, Mr. Khurana would either write a check to cash on VK Quick Mart's check account or draw on a line of credit. From 2002 to 2003, Mr. Khurana maintained a checking account at Pike County National Bank. In 2004, however, Mr. Khurana moved his banking business to State Bank & Trust (Account No. 60__ __ 25). (D-Ex. 13.) As with the checking accounts, Mr. Khurana testified that he maintained lines of credit at both Pike County National Bank and State Bank. The testimony, however, focused primarily on the account and line of credit with State Bank (Account No. 33__ __ __ 72). (D-Ex. 16.)

Mr. Khurana testified that on Fridays he would go to the State Bank and either write a check to cash or make a draw on the line of credit, usually for around \$20,000. He would then use the funds to cash payroll checks over the weekend. On Mondays, he would deposit the payroll checks into the VK Quick Mart checking account, and if a draw had been made on the line of credit, he would repay that amount by writing a check to cash (which State Bank and Trust would apply to the line credit), authorizing a transfer from the VK Quick Mart checking account to the line of credit, or writing a check payable to State Bank & Trust.

Shawn Lowery corroborated Mr. Khurana's testimony. At the time, Ms. Lowery was the Branch Manager of State Bank and Trust in McComb, Mississippi. (T. 58:15-20.) Ms. Lowery

testified that she had done business with Mr. Khurana for over ten years, first as an employee of Pike County National Bank and then in her current position with State Bank & Trust. (T. 57:23-26.)

Ms. Lower testified that Mr. Khurana would come in on Fridays and would either write a check to cash or draw \$20,000 to \$25,000 on the line of credit, depending on the time of the month and the needs of his business. (D-Ex. 16, T. 62:15-17, 69:18-22, 70:7-14.) If more than \$20,000 was needed, he would simply write a check to cash. (*Id.*) Ms. Lowery testified that when a draw was made, a loan proceeds check would be issued on Account No. 33____72 payable to Mr. Khurana. "He would then cash the check as a change order to get different monetary denominations to cash checks." (T. 61:15-19.) The following Monday, he would deposit the payroll checks that had been cashed on the weekend into the VK Quick Mart checking account. (T. 61:21-25, 63:24-27.) "Then funds would be transferred back to the line of credit." (T. 61:23-24.) Mr. Lowery testified that if line of credit was paid with a check written to cash, the check ran as a loan payment, in which case Account No. 33____72 would be stamped on the back. (T. 69:18-71:3., T. 71:13-15) If he did not have a check, payment would be made via an internal bank or checking account debit. (T. 72:5-7, 63:29-64:3.) In some instances, he would simply issue a check payable to State Bank. (72:10-12.)

Ms. Lowery made clear that if money from the line of credit was transferred or if checks were deposited into the VK Quick Mart checking account, the deposit would be reflected in the bank statement, which consists of copies of deposit slips and copies of checks written on the account:

Q. Okay. In what account was the money deposited when he drew on the line of credit?

A. It is the VK Quick Mart checking account.

Q. Which is number?

A. Exhibit No. 13.

Q. And does it show deposits?

A. Yes, if the check was deposited into this account.

Q. Or if he just called and said put it in my account.

A. Or if it was transferred in there, yes.

Q. Okay. And likewise when he made his deposit of the Wal-Mart checks, it went into that bank account – it was deposited back into that bank account.

A. Yes.

(T. 63:15-27; *see also id.* at 61:26-27 (“Q. And all of these transactions went through that account? A. Yes.”))

Ryan Smith testified that he performed a cash flow audit analysis. A cash flow audit consists of reviewing the deposits in bank accounts, subtracting any nontaxable items, and adding back cash paid outs to come to an assessment of the cash flow of the business. The resulting cash flow is then used as a proxy for taxable sales. (T. 15:22-29, 43:24-27, 55-55:20)

Mr. Smith testified, and the evidence indicates, that he was aware of Mr. Khurana’s check cashing activities and that payroll checks were being deposited into Mr. Khurana’s bank accounts. (D-Ex 1.; 17:14-17.) Although Mr. Smith testified that he reviewed bank statements to determine whether any non-taxable deposits were indicated on deposit slips, (T. 16:10-11.), Mr. Smith did not attempt to verify the deposit slips by checking to see if taxable or nontaxable items, including payroll checks, comprised these deposits. Instead, Mr. Smith used the checks to cash and transfers to the line of credit as a proxy in determining the amount of credit that Mr. Khurana should be allowed for nontaxable sales attributable to check cashing. (T. 34:4-34:22, 35:12-37:16, 52:19-52:20)

Mr. Smith testified that in performing the audit he "looked at bank statements, copies of image checks that were included with the bank statements, purchase invoices, sales invoices," as well as "copies of the sales tax returns and any sales ledgers that the taxpayers might have had." (T. 17:18-23.) For VK Quick Mark, Mr. Smith stated that Mr. Khurana furnished bank statements, credit card statements, purchase and sale invoices and utility bills. (T. 16:1-8, 28:26-17, 29:2-3, 30:24-25, 83:22-24.) While Mr. Smith later testified that that Mr. Khurana did not maintain register tapes, receipts or general sales ledgers showing his sales, his testimony on the issue of adequate records was contradictory at best. On cross-examination, for instance, Mr. Smith testified that Mr. Khurana did in fact maintain adequate records:

Q. Were you able to take the documents furnished to you by Mr. Khurana and make an audit?

A. Yes, sir.

Q. And come up with a figure that you allege that he owes?

A. Yes, sir.

Q. That was for the years 2002 and 2005.

A. Through two thousand five.

Q. Okay. So the records were adequate for you to do that?

A. Yes.

(T. 18:15-23, 19:14-25.) On direct examination, however, Mr. Smith directly contradicts this testimony by stating that Mr. Khurana's records were not adequate:

Q. Mr. Smith, we talked about the records that were used in VK Quick Mart audit and VK Wine and Liquor audit. What does the State Tax Commission consider adequate records kept by the taxpayer?

Mr. Way: Your Honor, I object unless he knows or has some basis for responding to that. The law says adequate records.

The Court: Rephrase your question to ask him whether in his knowledge and training he knows what the law on adequate records are.

Q. Mr. Smith, within your knowledge and training, do you know what adequate records are or what are adequate records?

A. It would be all purchase and sales invoices, general ledgers, income tax returns, bank statements with copies of checks included, copies of sales tax returns, cash register tapes, cash register reconciliation sheets from each day when the cash registers were checked up and any other sales records that the taxpayer keeps.

Ms. Deaton: May I approach?

The Court: Yes, you may.

Q. I handed you an exhibit. What document have I handed to you?

A. Mississippi Code Section 27-65-23 [sic].³

Ms. Deaton: If you will allow me a moment, Your Honor.

Q. I'm looking at paragraph one, Mr. Smith. Will you read that please?

A. [Witness reads the statute].

Q. And the third paragraph, if you will read that please.

A. [Witness reads the statute].

Q. In your opinion and based on the statute and the records provided to you did Mr. Khurana keep adequate records?

A. No.

(T. 32:10-33:3.)

The final witness was Mr. Mahoney, who was called as Mr. Khurana's expert. (*See generally* T. 90:19-120:19.) Mr. Mahoney was combative, argumentative, and of little help to anyone, especially Mr. Khurana. (T. at 127:12-13.) His testimony added nothing to the case and, therefore, need not be discussed any further here.

³ It appears that the reference to Mississippi Code Annotated § 27-65-23 is a mistake, and that the correct reference was, in fact, to Mississippi Code Annotated § 27-65-43.

3. Rule 41(b) Motion to Dismiss

Following the close of Plaintiff's case-in-chief, the MDOR moved to dismiss under Rule 41(b) of the Mississippi Rules of Civil Procedure. The MDOR argued that Mr. Khurana failed to maintain adequate records as required by Mississippi Code Annotated § 27-65-43, and therefore the DOR was entitled to the presumption of correctness established by Mississippi Code Annotated § 27-65-37. The DOR further argued that Mr. Khurana failed to present sufficient evidence to rebut the presumption. Accordingly, the MDOR argued that dismissal was proper under Rule 41(b). (T. at 120:23-122:19.)

In response, Mr. Way, Mr. Khurana's trial counsel, argued that dismissal was not proper because the evidenced established that Mr. Khurana cashed checks every weekend for four years and that he was not given sufficient credit for payroll checks deposited into the VK Quick Mart checking account. In support of his position, Mr. Way cited Ms. Lowery's testimony that \$500,000 to \$600,000 deposited into the account each weekend. Mr. Way cited the bank statements as further support of this position. (T. at 122:22-123:2)

In ruling on the DOR's motion, the Chancellor stated that "the burden of proof is on Mr. Khurana and his counsel to establish, [sic] to overcome the prima facie case of the Commission, which the court finds affirmatively that the Commission is entitled and does find that the state is entitled to the benefit of having a prima facie case." (T. at 126:3-8.) The Chancellor found that Mr. Khurana "failed to keep register tapes, z tapes, general sales ledgers, or other documentation of sales." (R. at 358.) Thus, while the Chancellor found that Mr. Khurana maintained "vendor invoices and bank statements," the Chancellor held that Mr. Khurana failed to maintain adequate records of gross proceeds of sales, gross receipts or gross income for his business during the audit period. (R. at 358-359.) The Chancellor further found that Mr. Khurana "failed to provide any competent evidence through his, the banker or his CPA's testimony to overcome the prima

facie correctness of the Defendant's audit assessments." Therefore, the Chancellor granted the MDOR's motion to dismiss.

III. SUMMARY OF ARGUMENT

This case poses an issue of statutory interpretation, namely: what constitutes adequate records for purposes of Mississippi Code Annotated § 27-65-43? The Chancellor's interpretation is not consistent with the plain language of § 27-65-43. That section establishes, not a ridged rule, but a flexible standard that turns on whether the records in question were necessary to determine the taxpayer's tax liability.

The ordinary meaning of necessary is "absolutely required." Therefore, the question posed by the statute is: are the records in question absolutely required to determine the taxpayer's tax liability?

Based on the evidenced presented at trial, the answer is a resounding no, because there was no testimony or evidence presented to indicate that the records that Mr. Khurana admittedly failed to maintain were absolutely necessary to determine Mr. Khurana's tax liability.

The Court's decision in *Marx v. Bounds* does not affect this conclusion. In so far as that case relates to the issue of whether the taxpayer maintained adequate records, *Bounds* stands merely for the proposition that whether the taxpayer maintained adequate records depends on the facts and circumstances of each case.

Bounds is further distinguishable because there the taxpayer relied solely on his uncorroborated, undocument testimony regarding his vague recollections of mark-ups. Here, however, Mr. Khurana has presented the testimony of a corroborating witness, but also has shown that the DOR's own exhibits support his theory of the case.

Because the Chancellor erred in applying the legal standard for determining adequate records under § 27-65-43, the Court should reverse and remand this case to the lower court for further proceedings.

IV. ARUGMENT

A. Standard of Review

Interpretation of statutes present a question of law, which this court reviews de novo. As this Court has held, it will not enforce a ruling of the Mississippi Department of Revenue that is “repugnant to the plain meaning of a statute.” *Oxy USA, Inc. v. Mississippi State Tax Commission*, 757 So.2d 271, 274 (Miss. 2000); *Mississippi State Tax Commission v. Lady Forest Farms, Inc.*, 701 So.2d 294, 296 (Miss. 1997). The duty to defer to an agency interpretation “has no material force where the agency interpretation is contrary to the statutory . . . language.” *Mississippi State Tax Commission v. Moselle Fuel Co.*, 568 So.2d 720, 723 (Miss. 1990).

Moreover, as this Court has said in interpreting the same statute, “It is familiar learning that doubts in tax statutes should be resolved in favor of the taxpayer.” *Stone v. W.G. Nelson Exploration Co.*, 51 So.2d 279, 282 (Miss. 1951).

B. The Chancellor erred in holding that Mr. Khurana failed to maintain adequate records with respect to check cashing activities.

The Chancellor held that Mr. Khurana failed to maintain adequate because he did not keep “z tapes, cash register tapes or general sales ledgers.” Mr. Khurana readily admits that he did not maintain such records. But nothing in Mississippi Code Annotated § 27-65-43 or the rules or regulations promulgated by the Commissioner indicates that such records are necessary to support a finding of adequate records. This is evident from the plain language of the statute itself, which states:

It shall be the duty of every person taxable under this chapter to keep and preserve for a period of three (3) years adequate records of the gross income, gross receipts or gross proceeds of sales of the business, including all invoices of merchandise purchased, all bank statements and cancelled checks, and all other books or accounts as may be necessary to determine the amount of tax for which he is liable. Said records shall be adequate in substance to conform with the provisions of this chapter and the regulations promulgated by the commissioner, and all of such records shall be written in the English language. All records shall be open for examination, at any time, by the commissioner or his duly authorized agent.

The commissioner may require any information or records from computer information systems on media common to those systems. Taxpayers' records may be sampled for audit purposes at the discretion of the commissioner and any assessment rendered as a result of same shall be considered prima facie correct.

The records provided for in this section shall be kept at the taxpayer's principal place of business within this state, and failure to keep and allow examination of such records shall subject the taxpayer to all the penalties of Section 27-65-85 of this chapter.

Miss. Code Ann. § 27-65-43.

Although the statute lists “invoices of merchandise purchased,” “bank statements and cancelled checks,” among the records *included* within the meaning of adequate records, the listing is preceded by the term “including,” which plainly indicates that the listing is intended to be nonexclusive. *Id.* (emphasis added); *see Gilmer v. State*, 955 So. 2d 829, 835 (Miss. 2007) (“Clearly, all locations in which a person is protected from voyeurism under this statute were not covered by the Legislature in its list as evidenced by its language ‘including, but not limited to.’”); *see also State v. Kurtz*, __ P. __, 2011 WL 1086474 at *6 (Or. 2011) (statutory terms such as “including” and “including but not limited to,” when they precede a list of statutory examples, convey an intent that an accompanying list of examples be read in a nonexclusive sense.); *Safeway Stores, Inc. v. Martinez*, 243 P.3d 1203, 1206 (Or. App. 2010) (legislature's use of the term “including” means that the legislature intended that wages are not limited solely to money paid by the employer to the worker in exchange for services, the itemized list following “including” is nonexclusive).

Section 27-65-43 does not set a per se standard. Instead, the statute requires the Court to look to whether the records are “necessary” to determine the amount of tax for which the taxpayer is liable. Section 27-65-43 does not define the term “necessary.” “In the absence of a statutory definition of this phrase, it must be given its common and ordinary meaning.” Miss. Code Ann. § 1-3-65; *Richardson v. Canton Farm Equipment, Inc.*, 608 So.2d 1240, 1250 (Miss.1992); *Board of Trustees of State Institutions of Higher Learning v. Mississippi Publishers Corp.*, 478 So.2d 269, 280 (Miss.1985). Webster's Dictionary defines "necessary" to mean "absolutely needed" or "required." Therefore, whether Mr. Khurana's failure to maintain a cash register tape or general sales ledger constitutes a failure to maintain adequate records depends on whether such records were absolutely needed or required to determine his tax liability.

The record is replete with testimony from indicating that Mr. Khurana failed to maintain general sales ledgers, or failed to maintain cash register tapes, etc., but there is nothing in the record to indicate that such records were “absolutely needed” or “required” in order for the Commissioner to make his assessment. The only evidence the Commissioner presented on this issue at trial was the testimony of the Commissioner's former auditor, Ryan Smith. Mr. Smith's testimony, was inconsistent in a number of respects. Mr. Smith testified that Mr. Khurana's records were, in fact, adequate to determine his tax liability, and while Mr. Smith later contradicted his own testimony, the fact that he was able to take the records that Mr. Khurana did maintain and make an assessment belies the suggestion that the failure to maintain a general sales ledger or cashier's tape rendered Mr. Khurana's records inadequate. There is no doubt that such records would be helpful in determining Mr. Khurana's tax liability, but the statute does not require taxpayers to maintain the most helpful records, just those “absolutely needed” or “required” to determine the taxpayer's tax liability.

C. *Marx v. Bounds* is distinguishable.

The Chancellor's reliance on the Supreme Court's decision in *Marx v. Bounds* does not compel the conclusion that Mr. Khurana's failure to maintain a cash register tape or general sales ledger rendered his records inadequate. 528 So.2d 822 (1988). In *Bounds*, the taxpayer contended the Commissioner used an excessive mark-up in making the assessment. "[T]he only records kept by Bounds were purchase invoices and bank records. There were no records reflecting actual sales by Handy Stop or Leon's Place, no sales invoices, no record of cash withdrawals, and no record of actual markups on the store's inventories." *Id.* at 824. The Supreme Court held that Bounds' records were inadequate for purposes of determining the gross proceeds of sale and affirmed the Chancellor's determination that the Commission's assessments were correct. The Court went on to determine that Bounds did not present sufficient evidence to rebut the presumption of correctness attending the Commissioner's assessments. *Id.* at 826-828. With respect to the adequate records issue, *Bounds* stands only for the proposition that whether the taxpayer maintained adequate records depends on the facts of the case. *Id.* at 825.

Bounds is also distinguishable on the ground that Mr. Khurana did not rely on his undocumented testimony to support his claim. In the second part of *Bounds*, the Court held that the vague recollections of the taxpayer were held insufficient to overcome the Tax Commission's assessments because the Tax Commission relied upon the taxpayers own sales records, markups known to be employed by the taxpayer at the time of audit, and the taxpayer's own tax returns. While Mr. Khurana introduced few exhibits of his own, there was really no need to because the Defendant's documents amply support his theory of the case. *Id.*

Mr. Khurana's bank statements, (Ex. 13) and the loan history (Ex. 16), when combined with the testimony of Ms. Lowery constitute more than competent evidence, at least with respect to Mr. Khurana's check cashing activities. These documents and testimony clearly established

that Mr. Khurana was doing a substantial amount of payroll check cashing through VK Quick Mart. Ms. Lowery made clear that Mr. Khurana would deposit the payroll checks into the VK Quick Mart checking account on Mondays. She also made clear that Mr. Khurana's bank statements reflected these deposits. In the end the best evidence of Mr. Khurana's check cashing activities was these records.

V. CONCLUSION

The ultimate question is whether the Court applied the correct standard in determining the adequacy of Mr. Khurana's records. The Chancellor found that Mr. Khurana's failure to maintain cash register tapes and a general sales ledger rendered his records inadequate without determining whether those records were necessary to determine Mr. Khurana's tax liability, as required by plain language of Mississippi Code Annotated § 27-65-43. The Chancellor thus erred in determining that Mr. Khurana failed to maintain adequate records. Accordingly, this Court should reverse and remand for further proceeds in the court below.


CERTIFICATE OF SERVICE

I, James G. McGee, Jr., attorney for appellants, Chander Paul Khurana, d/b/a VK Quick Mart, and Chander Paul Khurana, d/b/a VK'S Wine & Liquor, certify that a copy of the foregoing *Appellant's Brief* was served on Appellee's counsel by mailing the same in a postage paid envelope addressed as follows:

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Honorable Debbra K. Halford
Pike County Chancery Court Chancellor
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This the 30th day of March, 2011.



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