

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. MISC. 90-259

KEARLEY, INC.
1904 Dauphin Island Parkway
Mobile, L 36605,

§

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Taxpayer.

§

FINAL ORDER

The Revenue Department assessed privilege license tax against Kearley, Inc. (Taxpayer) for the period October, 1988 through September, 1990. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on October 10, 1990. Jerry F. Kearley appeared for the Taxpayer. Assistant counsel Dan Schmaeling represented the Department. This Final Order is based on the evidence presented by the parties.

FINDINGS OF FACT

The Taxpayer was engaged in the contracting/construction business in Mobile, Alabama during the period October, 1988 through September, 1990. The Taxpayer failed to obtain a construction company or contractor's license as required by Code of Ala. 1975, §40-12-84. The Department determined that the Taxpayer had in excess of \$200,000.00 in contracts during both years in question and thus assessed the maximum \$250.00 State license for both years and also the corresponding \$125.00 county license as provided by Code of Ala. 1975, §40-12-2(e).

The Department determined that the Taxpayer had in excess of \$200,000.00 in contracts for the fiscal year October, 1988 through September, 1989 based on a review of the Taxpayer's books and records. The Taxpayer agrees that it had contracts in excess of \$200,000.00 during the above fiscal year. However, the Department assessed the maximum license for the next fiscal year based only on Mr. Kearley's statement that the business expected to have in excess of \$200,000.00 for that year. Mr. Kearley testified at the administrative hearing that his statement was incorrect and that in fact the business only entered into contracts totaling \$86,945.50 during the fiscal year October, 1989 through September, 1990.

The Taxpayer's position is that he did not know that he was liable for the contractor's license and that he should not be required to pay penalty and interest for a tax that he did not know he owed. The Taxpayer also maintains that he should not be assessed the maximum amount for the fiscal year October, 1989 through September, 1990.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-12-84 levies a license tax on construction companies and contractors. The maximum State license is \$250.00 levied against all contractors with contracts or orders exceeding \$200,000.00 for the subject fiscal year. A corresponding county tax is levied in the amount of 50% of the State tax due. See Code of Ala. 1975, §40-12-2(e).

The Taxpayer concedes that the business had contracts exceeding \$200,000.00 for the fiscal year October, 1989 through September, 1990. Accordingly, the maximum combined State and county tax of \$375.00 is due for that year.

The Department assessed the maximum license for the fiscal year October, 1989 through September, 1990 based on statements made by the Taxpayer. The Taxpayer now argues that the contracts for the year totaled only approximately \$87,000.00. The Department could find no evidence of contracts in excess of \$200,000.00 for the year. Without evidence to the contrary, the license for the fiscal year October, 1989 through September, 1990 should be computed on contracts totaling \$87,000.00 (\$50.00 for the State license and \$25.00 for the county license as required by the licensing schedule set out in §40-12-84).

The Taxpayer argues that he should be relieved of the 15% penalty levied by Code of Ala. 1975, §40-12-10(e) because he was unaware that any tax was due. The above penalty may be waived if the Department materially contributed to the Taxpayer's failure to pay. See State v. Mack, 411 So.2d 799 (1982). However, in this case the Department in no way contributed to the Taxpayer's failure to pay the license for the subject years. Being unaware that the tax is due is no excuse. Accordingly, the penalty cannot be waived.

The Department is directed to recompute the assessment in

accordance with the above findings and thereafter make the assessment final, with interest running to the date of entry of the final assessment.

Entered this 15th day of October, 1990.

BILL THOMPSON
Chief Administrative Law Judge