

STATE OF ALABAMA  
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. S. 91-255

CONSOLIDATED ELECTRICAL §  
CONTRACTORS AND ENGINEERS, INC. §  
P.O. Box 1528 §  
Dothan, AL 36302, §

§

Taxpayer.

FINAL ORDER

The Revenue Department assessed contractor's gross receipts tax against Consolidated Electrical Contractors and Engineers, Inc. (Taxpayer) for the period July 1, 1990 through August 31, 1990. The Taxpayer appealed to the Administrative Law Division and the case was submitted on a stipulation of facts. David Johnston represented the Taxpayer. Assistant counsel Claude Patton represented the Department.

FINDINGS OF FACT

The Taxpayer contracted with the Alabama Highway Department in July and August 1990 to remove and replace the uninterruptable power source and storage batteries in the operations room below the Mobile highway tunnel in Mobile County. The power source supplies power to the closed circuit television, signal and communications equipment, and the control circuit in the tunnel operations room.

The Department contends that the contract was part of an overall plan of highway construction or reconstruction and thus subject to the contractor's gross receipts tax levied at Code of Ala. 1975, §40-23-50.

The Taxpayer argues that the "isolated maintenance and installation contract" in issue was a "corrective measure" and was not connected with construction or reconstruction of the highway tunnel.

#### CONCLUSIONS OF LAW

The contractor's gross receipts tax levies a 5% tax on the gross receipts derived from public contractors measured by the gross receipts derived from public contracts to construct, reconstruct or build any public highway road, bridge or street.

In Barron-Leggett Elec., Inc. v. Department of Revenue, 336 So.2d 1124 (1976), the Court of Civil Appeals ruled that the erection of lights along Interstates 65 and 10 was an integral part of the overall highway construction project and thus subject to the gross receipts tax. The Court stated that "every contract let in the process of building a highway according to specifications" of the Highway Department is taxable.

In Misener Marine Construction, Inc. v. Eagerton, 423 So.2d 161 (1982), the Supreme Court ruled that a contract for the removal of the destroyed Dauphin Island Bridge after Hurricane Frederick in 1979 was not a construction contract within the scope of §40-23-50 and thus not taxable. The Supreme Court distinguished Barron-Leggett as follows, at page 163:

The "total purpose" language used by the trial court is set out in the case of Barron-Leggett Electric, Inc. v. Department of Revenue, 336 So.2d 1124 (Ala. Civ. App. 1976). In Barron-Leggett, a contractor had agreed to

install lights along portions of specified highways. Holding that the gross receipts tax applied, the Court of Civil Appeals stated, "Every contract let in the process of building a highway according to the design and specifications as prepared by the highway department would appear to be part of the total purpose of highway construction."

However we must point out that the contract in Barron-Leggett called for the construction of one of several component parts needed to complete a highway. It is obvious that such a contract, and any others which are let for the purpose of constructing the individual parts of a project, can properly be classified as "part of the total purpose of construction." Yet, we do not view this "total purpose" classification as a "catch all" by which any contract ultimately related to construction, reconstruction, or building can be brought within the coverage of § 40-23-50. Indeed, to tax appellant under this "total purpose" standard would constitute an unwarranted expansion of the language set forth in the statute.

Misener holds that the nature of the activity contracted for is determinative and that a contract is not taxable if it does not include or require the construction or reconstruction of a highway or bridge.<sup>1</sup> The Court did state, without giving an example, "that under certain circumstances demolition activities can be an

---

<sup>1</sup>I do not agree with the Court's holding in Misener. The broad intent of the gross receipts tax is to tax all public contracts let by the Highway Department. The Legislature did not intend to apply fine distinctions and exempt those contracts related to and a necessary part of a highway project, but not involving actual construction. The bridge removal contract in Misener was an integral and necessary part of the highway department's overall project to clear the old bridge and rebuild a new bridge. The fact that the demolition and removal contract was let prior to and separate from the actual reconstruction work should make no difference. The removal was an integral first step in the overall reconstruction project. However, of course, I am bound by and will follow the Court's holding.

integral part of construction activities" and thus taxable. See Misener, at p. 163.

If the contract in issue had been limited to the removal of the old power source, Misener would apply and the job would not be taxable. However, the Taxpayer also contracted to install, i.e., construct, a new power source. The facts stipulated by the parties are sketchy, but presumable the operations room is an integral and necessary part of the tunnel, and replacement of the entire power source involved more than a minor repair. Consequently, the contract to replace the tunnel power source was a contract to reconstruct an essential part of the tunnel highway and thus taxable.

The above considered, the Department is directed to make the assessment in issue final, with interest.

Entered on May 19, 1992.

---

BILL THOMPSON  
Chief Administrative Law Judge