

STATE OF ALABAMA,  
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

§

vs.

§

DOCKET NO. S. 93-286

MUSCLE SHOALS ELECTRIC BOARD  
P. O. Box 2547  
Muscle Shoals, AL 35662,

§

§

Taxpayer.

§

FINAL ORDER

The Revenue Department assessed the Muscle Shoals Electric Board (Taxpayer) for State utility tax for the period October 1, 1989 through September 30, 1992. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on October 26, 1993. John Clement, Jr. appeared for the Taxpayer. Assistant counsel Dan Schmaeling represented the Department.

The issue in this case is whether a standard \$5.00 fee charged by the Taxpayer for sending a delinquent billing letter to a customer should be included in gross receipts subject to the utility gross receipts tax levied at Code of Ala. 1975, §40-21-80, et seq.

The Taxpayer provides electric utility service in the City of Muscle Shoals, Alabama. The Taxpayer bills its customers monthly and provides a deadline by which the bill must be paid. If a bill is 5 days delinquent, the Taxpayer sends the customer a standard billing letter reminding the customer of the delinquent bill and notifying the customer that service will be cut-off if the bill is

not paid within a certain time. The \$5.00 fee in issue is then charged regardless of whether the customer pays the bill before or after the cut-off date.

The Department argues that the \$5.00 charge is taxable based on Department Reg. 810-6-5-.26(1). That regulation states in part that "where an additional amount is added for failure to make payment within a prescribed period, the tax applies to the amount actually paid".

The Taxpayer argues that the \$5.00 charge is a collection charge incidental to the providing of utility services and thus not subject to the utility gross receipts tax under the authority of State v. Mobile Gas Service Corporation, Administrative Law Docket No. S. 90-149, decided by the Administrative Law Division on September 20, 1990. I agree with the Taxpayer.

In Mobile Gas, the issue was whether collection fees and reconnect fees charged by Mobile Gas were subject to the utility gross receipts tax. I held that the fees were only incidental to the providing of utility services and thus not subject to the utility tax. The Department appealed to Montgomery County Circuit Court, Civ. No. 91-679. Judge Reese affirmed that the fees were not taxable. The Department chose not to appeal further.

I see no substantive difference between the incidental collection and reconnect fees in Mobile Gas and the standard \$5.00 fee charged for a collection letter in this case. The \$5.00 charge

is an administrative charge to cover the cost of sending the 5 day collection letter and is unrelated to the amount of electric service provided by the Taxpayer to a customer. The same \$5.00 collection fee is charged whether the customer's overdue bill is \$10.00 or \$1,000.00.

Department Reg. 810-6-5-.26 is rejected to the extent it includes standard collection charges as taxable gross receipts subject to the utility gross receipts tax.

The assessment in issue is based entirely on the \$5.00 collection fee charged by the Taxpayer. Consequently, the assessment is dismissed.

The Taxpayer's attorney made a request for attorney fees at the hearing. The request is denied. There is no authority for awarding attorney's fees to a prevailing taxpayer in Alabama.

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

Entered on November 4, 1993.

---

BILL THOMPSON  
Chief Administrative Law Judge