

JOHN D. WOODHAM  
d/b/a Woodham's Cabinet Shop  
Route 5, Box 382  
Dothan, AL 36301,

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

§

§

Taxpayer,

§

vs.

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

DOCKET NO. MISC. 94-367

§

FINAL ORDER

The Revenue Department assessed privilege license tax against John D. Woodham ("Taxpayer"), d/b/a Woodham's Cabinet Shop, for the period October 1991 through September 1994. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on February 2, 1995. The Taxpayer represented himself at the hearing. Assistant counsel Wade Hope represented the Department.

The issue in this case is whether the Taxpayer was liable during the years in question for the contractor's license levied at Code of Ala. 1975, §40-12-84.

The Taxpayer is in the cabinet business and contracted to build and install cabinets during the years in question. The Taxpayer operated primarily as a sub-contractor, but also on occasion contracted directly with the property owner. The Taxpayer both built and installed the cabinets approximately 50% - 75% of the time.

During the years in issue, the Taxpayer obtained the "manufacturer's" license levied at Code of Ala. 1975, §40-12-177. The Taxpayer had been informed by the Houston County Probate Judge

that he was not liable for any other licenses.

The Department determined that the Taxpayer was also liable for the contractor's license levied at §40-12-84. That annual license is based on gross contracts and runs from a minimum of \$10 for gross contracts between \$5,000 and \$10,000, up to \$250 if total contracts are over \$200,000.

The Department reviewed the Taxpayer's sales journal and determined that the Taxpayer had in excess of \$200,000 in total contracts in each year. The maximum license was accordingly assessed by the Department, plus interest. The 15% delinquent penalty was waived because the Taxpayer had been erroneously informed by a Department employee that the §84 license was not due.

The Taxpayer argues that he should not be required to buy the contractor's license because the prime contractors with which he subcontracted were already licensed. The Taxpayer contends that he is not liable because "the license fee for what we supply and sometimes install has already been paid by the (prime) contractor to cover any building materials to be used on or in any building or structure of a building".

I understand the Taxpayer's argument. However, the contractor's license is an individual privilege license and must be obtained by every contractor engaged in business in Alabama. The license covers the contractor, not the materials used in a contract. A sub-contractor is not relieved of liability because

the prime contractor with which he deals already has a contractor's license.

Pate v. State, 8 So.2d 516 (Ala. 1942) is directly on point.

The taxpayer in that case was a sub-contractor that contracted with two prime contractors to install plumbing. Both prime contractors had the contractor's license. The taxpayer argued, as does the Taxpayer in this case, that because the prime contractors were licensed he should not also be required to be licensed. The Alabama Supreme Court rejected the taxpayer's argument and held that the statute "requires a license for each business conducted".

Pate , at page 518.

The Department concedes that if the Taxpayer had broken down his contracts between material and labor or installation, the contractor's license would have been based only on the labor or installation amounts. Unfortunately, the Taxpayer could not separate the materials from the installation. Consequently, the license was based on total contracts accepted in each year.

I must add that I disagree with the Department's position that the contractor's license should be computed on installation or labor only. Rather, the statute requires that the license must be based on the "gross amount of all orders or contracts accepted", which would include both materials and labor or installation.

Although the Taxpayer had been informed that no additional licenses were owed, the §84 license is clearly due. Accordingly,

the final assessment in issue must be affirmed. I agree, however, that the penalty levied at §40-12-10(e) was properly waived by the Department. That penalty should also be waived for the subsequent fiscal year 1994 - 1995.

The above considered, judgment is hereby entered against the Taxpayer for privilege license tax in the amount of \$1,284.65. This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered on February 23, 1995.

BILL THOMPSON  
Chief Administrative Law Judge