

PERDIDO VINEYARDS OF
GEORGIA, INC.
22100 County Road 47
Perdido, AL 36562,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. MISC. 99-489

FINAL ORDER

Perdido Vineyards of Georgia, Inc. requested a refund of privilege license tax for the fiscal years ending September 30, 1997, 1998, and 1999. The Department denied the refund. James Eddins (ATaxpayer@), the owner of Perdido Vineyards, appealed to the Administrative Law Division pursuant to Code of Ala. 1975, ' 40-2A-7(c)(5)a. A hearing was conducted on April 11, 2000, in Mobile, Alabama. The Taxpayer attended the hearing. Assistant Counsel Duncan Crow represented the Department.

ISSUE

The issue in this case is whether the Taxpayer-s business is subject to the privilege license tax levied at Code of Ala. 1975, ' 40-12-87.

FACTS

The Taxpayer has operated a winery in Baldwin County, Alabama since 1979. He grows grapes and processes the grapes into native Alabama wine at the facility. The Taxpayer then sells the wine to customers in and outside of Alabama.

The Taxpayer is licensed by the Alcohol Beverage Control Board (AABC Board@) as a manufacturer of alcoholic beverages pursuant to Code of Ala. 1975, ' 28-3A-6. He

also pays the \$25 annual privilege license imposed at Code of Ala. 1975, ' 28-6-4(a). The winery is also regulated by the Alabama Health Department.

The Department determined that the Taxpayer was subject to the privilege license tax levied at ' 40-12-87. The Department consequently billed the Taxpayer for the fiscal years ending September 30, 1997, 1998, and 1999. The Taxpayer paid the tax and applied for a refund. The Department denied the refund. The Taxpayer appealed.

ANALYSIS

Section 40-12-87 is entitled "Cottonseed oil mills, cotton mills, factories, etc.," and levies a privilege license tax on the following:

Every person operating a cottonseed oil mill; cotton mill; cloth mill; towel factory; garment factory; yarn mill; hosiery mill; peanut mill; peanut oil mill; peanut shelling plant; paper mill; pulp mill; mill manufacturing sheeting, rugs, bags, hats cement, carpets, lime plaster, soap, chemical, acid (other than fertilizer) explosive; and all mills manufacturing any finished or semifinished products of tobacco, thread, yarn, cloth, fur, felt, nylon, paper, jute, rubber, iron, iron ore, copper, brass, tin, coal, coke, sand, cement, glass, clay, slag, aluminum, bauxite, ore, grain, other than what is commonly called a grist mill, oats, corn, rye, synthetic rubber, stone, oil, crude oil, tar, resin, asphalt, paraffin, plastics, fibers, straw, cellulose, or other factory where materials are woven, made, or assembled shall pay the following license tax:

The Taxpayer argues that his ABC license is sufficient for him to operate his business, and that he should not be required to also have the privilege license levied at ' 40-12-87. However, the Taxpayer is not exempted from the ' 40-12-87 license simply because he has an ABC Board license.

Any business in Alabama may be licensed and/or regulated by more than one agency of the State. If a business is subject to two or more licensing provisions administered by the Revenue Department in Chapter 12 of Title 40, the business must

obtain all required licenses, without credit or offset. Code of Ala. 1975, '40-12-14. Consequently, the fact that the Taxpayer's business is licensed by the ABC Board (and also regulated by the Alabama Health Department) does not exempt the business per se from the '40-12-87 license.

The threshold question, however, is whether the Taxpayer's business is required to be licensed pursuant to '40-12-87.

Section 40-12-87 specifies 61 types of mills, 3 types of factories, and 1 type of plant that are specifically covered by the statute. A winery that produces wine is not listed. Consequently, the '40-12-87 license applies only if the Taxpayer's winery is within the scope of the catchall phrase - Another factory where materials are woven, made, or assembled. . .@

In construing a statute, the principle of *Æjusdem generis*@ requires that where general words follow a specific listing of persons or things, the general words must be strictly construed to apply only to persons or things of the same general nature as those specifically listed. Lambert v. Wilcox County Commission, 623 So.2d 727, 731 (1993). The 64 types of businesses listed in the statute do not include any facilities at which alcoholic or other beverages are produced or manufactured. It follows that the catchall phrase should not be broadly construed to include a winery at which wine is produced.

The wording of the catchall phrase also indicates that the legislature did not intend to include a winery within the scope of the statute. Arguably, a winery may fit the definition of a factory, although in everyday usage a factory and a winery are distinguishable. In any case, for a factory to be included in the catchall phrase, it must be *where materials are woven, made, or assembled.*@

Material is defined as the substance or substances out of which a thing is or can be constructed. American Heritage Dictionary, Second College Edition at 772. Grapes are not commonly known or referred to as a material. Further, wine is produced or processed in a winery, not constructed.

Another general rule of statutory construction is that a statute levying a tax must be strictly construed for the taxpayer and against the taxing authority. If the levy does not clearly apply to a particular taxpayer, it should not be applied. Alabama Farm Bureau Mutual Consolidated Insurance Co. v. City of Hartselle, 460 So.2d 1219 (1984); State v. Mack, 411 So.2d 799 (1982). Strictly construing ' 40-12-87 against the Department, the Taxpayer's winery is not within the scope of the statute. The Department is directed to issue the refund in question to the Taxpayer.

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

Entered April 27, 2000.

BILL THOMPSON
Chief Administrative Law Judge