STATE OF ALABAMA DEPARTMENT OF REVENUE,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE
	§	ADMINISTRATIVE LAW DIVISION
v.	§	DOCKET NO. S. 86-108
GERALD GARRISON d/b/a Just Golf 2615 Hamilton Road Opelika, AL 36801,	§	
	§	
Taxpayer.		

ORDER

This matter involves three disputed preliminary assessments of State, Lee County and City of Opelika sales tax entered by the Revenue Department against Gerald Garrison, d/b/a Just Golf (hereinafter "Taxpayer") for the period July 1, 1983 through June 30, 1985. A hearing was conducted in the matter on July 31, 1986. The Taxpayer was present and represented himself. The Revenue Department was represented by assistant counsel Arthur Leslie. Based on the undisputed evidence submitted in the case, and in consideration of the arguments and authorities presented by both parties, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The Taxpayer operates a golf recreation center, which includes a driving range, miniature golf course, and an accessory shop. There is no dispute that sales tax is due on the gross proceeds derived from the above activities.

The Taxpayer, a registered Professional Golf Association

member, also gives on-premises golf lessons or golf clinics for which a fee is charged. The issue in dispute is whether sales tax is due on the gross proceeds derived from said golf lessons.

CONCLUSIONS OF LAW

Code of Alabama 1975, §40-23-2 reads in pertinent part as follows:

> There is hereby levied, in addition to all other taxes of every kind now imposed by law, and shall be collected as herein provided, a privilege or license tax . . .
>
> (2) Upon every person, firm or corporation engaged or continuing within this state in the business of conducting or operating places of amusement or entertainment, billiard and pool rooms, bowling alleys, . . . golf courses, or any other place at which any exhibition, display, amusement or entertainment is offered to the public or place or places where an admission fee is charged, . . .

The Department argues, in essence, that the Taxpayer operates a place of amusement or entertainment within the scope of subsection (2) above, and consequently, that the gross proceeds derived from any activity carried on therein is subject to the tax. The Taxpayer contends that golf lessons are a professional service, separate and apart from the driving range, accessory shop and golf course, and do not constitute an amusement or entertainment subject to the tax. Upon review of the facts, and in consideration of the scope of the statute, it must be determined that the Taxpayer's argument is correct.

The tax is levied upon the privilege of operating a place of

amusement, and applies to the gross proceeds derived from charges for specific entertainment activities carried on therein, such as the green fees charged at public golf courses, admission fees charged at various sporting events, etc. However, the fact that a portion of a business may be subject to the public amusement or entertainment sales tax does not mean that every activity carried on by the Taxpayer is also subject to the tax. Only if the specific activity or event to be taxed constitutes a public amusement or entertainment, or is directly related to or constitutes an integral part thereof, should it be subject to tax. Thus, although the Taxpayer's business does include several taxable activities, the golf lessons, which are a professional service and are not provided for entertainment or amusement within the purview of subsection (2), would not be taxable. The golf lessons are separate and distinct from the Taxpayer's golf amusement center.

This case is distinct from Starlite Lanes, Inc. v. State, 214 So.2d 324, in which the proceeds derived from the rental of bowling shoes at a bowling alley were found to be subject to sales tax. There, the rental of shoes was directly related to the function of the bowling alley, which is specifically subject to tax under §40-23-2(2). Contrast the present case, where the Taxpayer's golf lessons are not directly related to the other taxable activities carried on at the golf center. As stated in State Tax Commission

v. Hopkins, 176 So. 210, sales tax should not extend to income derived from skill in exercise of one's profession.

The conclusion reached herein is supported by the rule of construction that a levy section should be construed strictly against the taxing authority and for the taxpayer. Hamm v. Business Music, Inc., 209 So.2d 663; State v. Community Blood and Plaza Service, 267 So.2d 176. Further, Tennessee Sales Tax Regulation 1320-5-1-1.22, which is not binding but does offer some guidance, also supports the above result. that regulation reads as follows:

> Fees or charges for the privilege of entering or engaging in tennis, racquet ball, hand ball, skiing, dancing or any other amusement or recreational activity, including contests or tournaments, are taxable in addition to membership fees or admissions. Fees or charges for instruction in such activities are not taxable. If recreational activity not essential to or a part of the instruction is also provided, the entire charge shall be subject to tax unless charges for instruction are separately billed. (Emphasis added).

Based on the above, the Department is hereby directed to reduce and make final the assessments in issue in the amount of zero.

Done this 16th day of October, 1986.

BILL THOMPSON
Chief Administrative Law Judge