

WILKS TIRE & BATTERY SERVICE
2049 Beltline Road
Decatur, AL 35603,

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

DOCKET NO. MISC. 01-255

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

FINAL ORDER

Wilks Tire and Battery Service (ATaxpayer@) petitioned to the Department for a refund of a \$500.00 penalty it paid for failing to timely obtain a scrap tire license. The Department denied the petition. The Taxpayer appealed pursuant to Code of Ala. 1975, ' 40-2A-7(c)(5)a. A hearing was conducted on July 19, 2001. The Taxpayer-s representative was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Wade Hope represented the Department.

The issue in this case is whether the Taxpayer owes the \$500 penalty levied at Code of Ala. 1975, ' 22-40-8(b) because it failed to timely obtain a scrap tire license for the fiscal year beginning October 1, 2000.

The Taxpayer operates a tire business in Morgan County, Alabama, and is subject to the scrap tire license levied at Code of Ala. 1975, ' 22-40-2. That statute levies a \$25.00 annual State license on all scrap tire dealers operating in Alabama. Code of Ala. 1975, ' 40-12-2(e) also levies a corresponding county license equal to 50 percent of the State license, or \$12.50 in this case. The scrap tire licensing provisions became effective for the fiscal year ending September 30, 2000.

The Taxpayer obtained the initial scrap tire license for the fiscal year ending September 30, 2000, but failed to renew the license for the next year before the October 31, 2000 deadline, as required by Code of Ala. 1975, ' 40-12-10(e). The Taxpayer was notified in early November 2000 that its license renewal was delinquent. The Taxpayer immediately paid the renewal, plus the \$500.00 penalty levied at ' 22-40-8(b). The Taxpayer petitioned for a refund of the penalty. The Department denied the petition. The Taxpayer appealed.

The Taxpayer's appeal letter reads as follows:

AI have received a denial letter for a Petition For Refund that was filed on 12/05/00. I am filing this Notice of Appeal to have this finding reviewed. The Scrap Tire Receivers License renewal form was received in our office on 11/09/00. It was therefore impossible to pay this license renewal by 11/01/00. We submitted payment immediately upon receiving the renewal notice. I also feel that a \$500.00 fine for a \$37.50 license is entirely too much. At Wilks Tire & Battery service we pay a large sum of state taxes every month as well as taxes in the Marshall county, Etowah county, Madison county, Lauderdale county, Dekalb county, and Morgan county and we pay these taxes in a timely manner. I hope that you will review this appeal and reverse the decision made to deny. If you have any questions concerning this matter, please let me know.@

The Department argues that because the Taxpayer failed to renew the license before the October 31, 2000 deadline, the \$500.00 penalty levied at ' 22-40-8(b) was correctly assessed. That section provides in pertinent part that the Apenalty for failure to obtain a license as required by this chapter . . . shall be five hundred dollars (\$500.00).@ The Taxpayer obtained the initial license, but either forgot or was unaware that the license needed to be renewed annually. Unfortunately for the Taxpayer, the Legislature specified that if the annual license is not timely obtained, a \$500.00 penalty shall apply. The Legislature also specified that the procedures set out in Article 1 of Chapter 12 of Title 40 shall govern. Code of Ala. 1975, ' 40-12-10(f) provides that it Ashall be unlawful for any probate judge or other

officer to fail to collect such penalties (including the scrap tire license penalty) when issuing such license.¹

Because the scrap tire license is new, the county could have as a courtesy notified all scrap tire dealers before the deadline that the license must be renewed annually. But the county was not required to do so, and perhaps because of limited personnel it was not able to do so. In any case, the Taxpayer knew or should have known it was liable for the annual license because it had properly obtained the initial license. The burden was on the Taxpayer to renew the license by the due date.

The \$500.00 penalty must be affirmed based on the strict language of the statute. I also note that the Administrative Law Division is authorized to waive a penalty for reasonable cause, but only concerning those penalties levied in Title 40, Code of Ala. 1975. See, Code of Ala. 1975, ' 40-2A-11(h). As indicated, the scrap tire penalty is in Title 22, not Title 40.

The Department's denial of the Taxpayer's petition for refund is affirmed.

¹ Although the language of ' 40-12-10(f) is mandatory, Alabama's courts have held that the penalty should not apply if the licensee's failure to comply resulted from error or misinformation provided by the issuing authority. *State v. Mack*, 411 So.2d 799 (Ala.Civ.App.1982). However, that did not occur in this case.

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

Entered July 27, 2001.