STATE OF ALABAMA DEPARTMENT OF REVENUE,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
v.	§	DOCKET NO. MISC. 88-202
BEN T. HAYES d/b/a Hayes Chevron 606 East 5th Street Attalla, AL 35954,	§	
Taxpayer.	§	

FINAL ORDER

The Revenue Department assessed license tax against Ben T. Hayes, Individual, d/b/a Hayes Chevron (Taxpayer) for the period October 1, 1985 through September 30, 1988. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on March 20, 1990. The Taxpayer was notified of the hearing date by certified mail on February 1, 1990, but failed to appear. Assistant counsel J. Wade Hope represented the Department. This Final Order is entered based on the evidence presented by the Department.

FINDINGS OF FACT

The Taxpayer owns and operates a gasoline station in Attalla, Alabama. The county license inspector inspected the Taxpayer's business and cited the Taxpayer for (1) the soft drink dispensing machine license levied at §40-12-69(b), (2) the gasoline station and pump license levied at §40-12-106, (3) the sandwich shop license levied at §40-12-153, (4) the vending machine license levied at §40-12-176, and (5) the annual store license levied at §40-12-315. The preliminary assessment in issue is based on the

above.

The Taxpayer apparently concedes that he is liable for the soft drink and sandwich shop licenses. Conversely, the Department also now concedes that the annual store license is not due because the Taxpayer's principal business involves the selling of petroleum products, see §40-12-310. Thus, the only two licenses in dispute are the gasoline pump license levied by §40-12-106 and the vending machine license levied by §40-12-176.

The Taxpayer's business has four gas islands with two dispensing or pumping machines per island. Each machine has three separate nozzles, for a total of twenty-four nozzles at the station. The license inspector considered each nozzle to be a separate pump, and thus cited the Taxpayer for twenty-four pumps. The Taxpayer argues that each separate machine constitutes one pump, and not each nozzle, and thus that he has only eight pumps, not twenty-four.

The license inspector cited the Taxpayer for operating vending machines at his station. However, the Taxpayer denies that he has any vending machines, and no evidence was introduced by the Department establishing that the Taxpayer operates vending machines at his station.

CONCLUSIONS OF LAW

Section 40-12-106 levies a gasoline station and pump license tax based on the number of gasoline pumps operated by the station.

The phrase "gasoline pump" is not defined in the revenue code. In such cases, the undefined word or phrase must be given its normal, commonly understood meaning. State v. Crayton, 344 So.2d 771; Morgan County Commission v. Boswell, 293 So.2d 830.

A gasoline pump is generally understood to be a dispensing machine from which gasoline is pumped into a motor vehicle or other container. In some cases, a single dispensing machine has three different nozzles with three different grades or types of gasoline to choose from. The nozzles are interrelated in that when one nozzle is activated, the remaining two nozzles cannot be used. The machine also has only one display that shows the volume and dollar amount of each sale.

The machine described above is a single gasoline pump. That is, any machine from which gasoline can be pumped from only one nozzle at a time constitutes only one pump. A machine that can pump gasoline from two nozzles at the same time (for example, a machine with a set of three nozzles on each side) would constitute two pumps, and so forth.

In the present case, the Taxpayer has eight separate dispensing machines with three nozzles each. However, as stated, only one nozzle on each machine can be used at any one time. Accordingly, the Taxpayer operates only eight separate gasoline pumps, and not twenty-four as argued by the Department.

The Department has long considered each nozzle to be a separate pump, and thus correctly argues that its longstanding

interpretation should be given due consideration. However, that rule of construction is more than offset by the fact that any uncertainty in a taxing statute must be strictly construed against the Department and for the taxpayer. Thompson Tractor Company, Inc. v. State, 432 So.2d 493; State v. Kershaw Manufacturing Company 372 So.2d 1325.

The county license inspector also cited the Taxpayer for the vending machine license levied at 540-12-176. However, no evidence was introduced at the hearing that the Taxpayer did in fact operate vending machines at his filling station. Without such prima facia proof, the citation for a vending machine license must be voided.

The above considered, the Department is hereby directed to recompute the assessment as set out herein. The assessment should then be made final, with applicable interest.

Entered this the 3rd date of April 1990.

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BILL THOMPSON
Chief Administrative Law Judge