

STATE OF ALABAMA  
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. MISC. 89-212

HERBERT HAAR, individual,  
d/b/a German Auto Repair  
2320 SW. Ross Clark Circle  
P.O. Box 2085  
Dothan, AL 36302,

§

§

§

Taxpayer.

§

FINAL ORDER

The Revenue Department entered an assessment against Herbert Haar, d/b/a German Auto Repair (Taxpayer) for an automotive dismantler and parts recycler license for the period October, 1986 through September, 1989. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on September 5, 1990. Clarence W. Slaughter, Esq. appeared for the Taxpayer. Assistant counsel Duncan Crow represented the Department. This Final Order is entered based on the evidence and arguments presented by the parties.

CONCLUSIONS OF LAW

The Taxpayer operates three businesses at the same location on Ross Clark Circle in Dothan., Alabama. The primary business is German Auto Repair, which repairs foreign automobiles. Imported Automotive Parts is a second separate business that is engaged in selling new and rebuilt foreign automobile parts. The third business is a coin and jewelry retail outlet.

A Revenue Department Enforcement officer inspected the

Taxpayer's business location and noted approximately 35 to 55 old, inoperable automobiles in a back lot behind the Taxpayer's facility. The Enforcement officer observed that a number of the automobiles had parts either missing or removed and stored in the body of the vehicle. Based thereon, the Department cited the Taxpayer as an automotive dismantler and parts recycler pursuant to Code of Ala. 1975, §40-12-410, et seq. The Department found no evidence that the Taxpayer was reselling salvaged parts from the abandoned vehicles, but rather, the license was assessed based on the statutory definition found at §40-12-410(1) which provides that any business with ten or more inoperable vehicles on its premises shall be presumed to be an automotive dismantler and parts recycler.

The Taxpayer argues that he is not and has never operated as an automotive dismantler and parts recycler. The Taxpayer explained at the administrative hearing that the old cars on his lot were abandoned for various reasons by customers that had brought the vehicle into his shop for repairs or an estimate of repairs. When the customer did not return for the vehicle in a reasonable time, the vehicle was moved to the back lot and added to the Taxpayer's collection of other abandoned vehicles.

The Taxpayer and another long-time employee of German Auto Repair both testified that none of the abandoned vehicles have ever been dismantled and sold and that no parts from the vehicles had

ever been rebuilt, recycled or resold. The Taxpayer also testified that his business never reused or rebuilt any used parts, but rather, purchased all of the new and rebuilt parts that were sold by his parts business, Imported Automotive Parts.

#### CONCLUSIONS OF LAW

Any business operating as an automotive dismantler and parts recycler is required to pay an annual license fee of \$225.00, see §40-12-412. An "automotive dismantler and parts recycler" is defined at §40-12-410(1) as follows:

A person, firm or corporation engaged in the business of purchasing and dismantling, disassembling or repairing, wrecked, abandoned or repairable motor vehicles, and selling the usable parts thereof, or selling such wrecked, abandoned or repairable motor vehicles as a unit at wholesale, or selling the hulk of the vehicle after the salvageable parts have been removed. For the purposes of this article, a person, firm or corporation shall be presumed to be engaged in the business of an automotive dismantler and parts recycler if such person, firm or corporation shall possess 10 or more inoperable motor vehicles for more than 30 days, except where such inoperable motor vehicles are being held by a licensed junk dealer or scrap processor for the purpose of recycling scrap metal or are being held by a license repair business awaiting repairs, . . .

In the present case the Taxpayer does not fit the above statutory definition of a dismantler and parts recycler because (1) the Taxpayer never purchased any of the abandoned vehicles in question, which is a requirement of the statutory definition, and (2) the Taxpayer never sold any of the abandoned vehicles or any parts from the vehicles, which is another requirement of the definition.

However, the Taxpayer did possess more than 10 inoperable vehicles for more than 30 days, and thus under the statute must be presumed to be a dismantler and recycler. The determinative issue is whether the statutory presumption is conclusive in light of the evidence to the contrary.

"Presume" is defined by the American Heritage Dictionary, Second College Edition (1982) as follows: "1. To take for granted, assumed to be true in the absence of proof to the contrary. The same source defines "presumption" as follows: "5. Law An inference as to the truth of an allegation or proposition, based on probable reasoning in the absence of or prior to actual proof or disproof."

Thus, the statutory presumption is valid only as long as there is no evidence or proof to the contrary. As noted, the evidence indicates that the Taxpayer is not a dismantler or parts recycler as defined by §40-12-410(1). Accordingly, the assessment in issue should be reduced and made final showing no tax due.

Entered this 6th day of September, 1990.

---

BILL THOMPSON  
Chief Administrative Law Judge