

BAXLEY BLOW PIPE, INC. §
3300 East Cottonwood Road
Dothan, AL 36301, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer, §

vs. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

DOCKET NO. MISC. 94-363

FINAL ORDER

The Revenue Department assessed privilege license tax against Baxley Blow Pipe, Inc. ("Taxpayer") for the period October 1991 through September 1994. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on January 11, 1995. Jerome Baxley appeared for the Taxpayer. Assistant counsel Wade Hope represented the Department.

The Taxpayer's representative concedes that his business underpaid its contractor's license for the years in issue. The issue in dispute is whether the Taxpayer should also be required to pay the 15% delinquent penalty levied at Code of Ala. 1975, §40-12-10(e).

The Taxpayer is a sheet metal fabricator and was required during the years in issue to buy both the annual construction contractors license levied at Code of Ala. 1975, §40-12-84, and also the manufacturer's license levied at Code of Ala. 1975, §40-12-87. The contractor's license runs from \$10.00 up to \$250.00 based on the licensee's gross contracts during the year. The manufacturer's license is also graduated based on total capital employed during the year.

The Taxpayer's representative testified that he paid both licenses as instructed by the Houston County Probate Judge. Specifically, the representative claims that the Probate Judge's office sent him a notice each year directing him to provide a copy of his business's financial statement for the previous fiscal year.

The Taxpayer complied and the Probate Judge subsequently notified the Taxpayer how much he owed for each license. As stated, the Taxpayer concedes that he underpaid the contractor's license in the years in issue, but that he should not be liable for the delinquent penalty because he paid as instructed by the Probate Judge.

I sympathize with the Taxpayer's representative in this case. However, Alabama law requires that the delinquent penalty for failing to correctly pay the license tax in issue must be assessed.

Sections 40-12-10(e) and (f) read in pertinent part as follows:

(e) Where any license issuable by the probate judge or commissioner of licenses shall be delinquent, the same shall be subject to a penalty of 15% of the amount of the license, which penalty must be collected by the probate judge

(f) It shall be unlawful for any probate judge or other officer to fail to collect such penalties when issuing such license.

In addition to the above, the Taxpayer's representative testified that an employee at his business knew that the contractor's license was not based on capital employed, and thus that the Probate Judge was not collecting the correct amount of

contractor's license from the Taxpayer. The notice sent by the Probate Judge's office to the Taxpayer clearly related only to the manufacturer's license levied at §40-12-87, and not also to the contractor's license levied at §40-12-84. The duty to obtain the correct license is on the Taxpayer. Thus, because the Taxpayer had reason to know that it was not properly paying the contractor's license, the Taxpayer should have inquired concerning the correct amount due.

The graduated fee schedule set out in §40-12-84 is straightforward. A contractor can look at the schedule, determine his gross contracts during the year, and pay the correct amount of tax. The Taxpayer failed to do so in this case.

I believe that the Taxpayer's representative made a honest mistake in underpaying his contractor's license for the subject years. Consequently, under the circumstances I would waive the penalty in issue if I had discretion to do so. However, §40-12-10 requires that the penalty shall be paid and it is unlawful not to collect such penalty from the licensee.

The above considered, the penalty in issue in the amount of \$135.00 is affirmed. Judgment is entered accordingly.

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

Entered on February 7, 1995.

BILL THOMPSON
Chief Administrative Law Judge