

CURRY LANDSCAPING, A Partnership §
and its partners F. Malone Curry and §
John K. Curry §
800 Hillcrest Road §
Mobile, Alabama 36695, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer, §

DOCKET NO. MISC. 94-464

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed privilege license tax against Curry Landscaping, a partnership, and its partners F. Malone Curry and John K. Curry (together "Taxpayer"), for the period October 1991 through September 1994. The Taxpayer appealed to the Administrative Law Division, and a hearing was conducted on April 28, 1995 in Mobile. Bob Galloway and Tom Galloway appeared for the Taxpayer. Assistant Counsel Duncan Crow represented the Department.

This case involves the "contractor's" license levied at Code of Ala. 1975, §40-12-84.

The Taxpayer is engaged in the general landscaping business in the Mobile area. The Taxpayer installs underground irrigation systems, lays sod, plants trees, shrubs, etc., and performs general landscape maintenance.

The Taxpayer concedes that its irrigation system contracts involve excavation, and thus should be included in the measure of the §84 contractor's license. The issue in this case is whether the Taxpayer's landscaping contracts should also be included in the

measure of the license. That issue turns on whether digging a hole for the purpose of planting trees, shrubs, etc. constitutes "excavation . . . for any purpose" within the scope of §84.

The §84 license is levied in part on "orders for or contracts to excavate earth, rock, or other material for foundations or any other purpose. . . ". The license is measured by the gross amount of all orders or contracts accepted.

The Taxpayer in this case purchased a \$25.00 annual license in the subject years based on its total irrigation system contracts of between \$20,000.00 and \$50,000.00. The Department subsequently determined that all of the Taxpayer's contracts were subject to the tax. Because the Taxpayer's total contracts exceeded \$200,000.00 annually, the Department assessed the Taxpayer for the maximum \$250.00 license in each year.

The Taxpayer argues that the statute was intended to apply only to construction contracts. The Taxpayer contends that digging a hole to plant a tree or shrub is not commonly referred to as construction, and thus is not subject to the license. The Alabama Supreme Court has broadly construed the term "excavation" as used in §84 to include drilling an oil well. State v. George H. Jett Drilling Co., 186 So.2d 925 (1966). As stated in Jett, at page 926, "We think the words 'for any other purpose' embrace any excavating not specifically listed in the statute. . . ".

The Administrative Law Division relied on Jett in holding that drilling water wells constituted excavating for any purpose and

thus was subject to the §84 license. See, State v. Johnny A. Radford, Admin. Docket No. Misc. 92-309, decided February 22, 1993.

Erecting or installing a metal support pole in the ground or to a building for purposes of installing satellite dishes has also been held to be subject to the §84 license. Gulf Coast Electronics, Inc. v. State, Admin. Docket Misc. 94-434, decided February 14, 1995.

I agree that the language specifically used in §84 relates to what is commonly known as construction work, i.e. wiring, paving, curbing, foundation work, or the construction of sewers, highways, bridges, dams or railroads. However, given the Supreme Court's broad construction of the statute in Jett, the license must be construed to include "excavation . . . for any other purpose", and not just those activities listed in the statute. Planting trees, shrubs, etc. is certainly not incidental to the landscaping business and clearly involves the excavation of dirt. Consequently, the Taxpayer's landscaping contracts that included planting were properly included in the measure of the §84 license.

The final assessment in issue is affirmed. Judgment is entered against Curry Landscaping and the individual partners, F. Malone Curry and John K. Curry, in the amount of \$1,173.17, plus applicable interest.

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

Entered August 24, 1995.

BILL THOMPSON
Chief Administrative Law Judge