

PLANTATION SHUTTERS & DESIGNS	§	STATE OF ALABAMA
2141 Lower Wetumpka Road		DEPARTMENT OF REVENUE
Montgomery, Alabama 36110,	§	ADMINISTRATIVE LAW DIVISION
Taxpayer,	§	DOCKET NO. MISC. 95-269
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

FINAL ORDER

The Revenue Department assessed privilege license tax against Plantation Shutters & Designs, a partnership, and its partners, Gary L. Allen and Steve T. Womble (together "Taxpayer"), for the period October 1992 through September 1995. The Taxpayer appealed to the Administrative Law Division, and a hearing was conducted on September 20, 1995. Assistant Counsel Wade Hope represented the Department. Leigh O'Dell represented the Taxpayer.

The Taxpayer sells and installs plantation shutters. The issue in dispute is whether the Taxpayer is liable for the annual "contractor's" privilege license levied at Code of Ala. 1975, §40-12-84.

The Taxpayer sells and installs plantation shutters in the Montgomery area. After receiving an order from a customer, the Taxpayer purchases prefabricated shutters from its supplier. The Taxpayer modifies the shutters, if necessary, to fit the customer's windows. The shutters are painted at the Taxpayer's warehouse in Montgomery prior to installation. The Taxpayer usually installs the shutters directly to the customer's windows, but sometimes is required to first build and install a wood frame to which the

shutter is attached. Caulking and touch-up painting is performed as necessary after the shutters are installed.

Section 40-12-84, commonly known as the "contractor's" license, reads in pertinent part as follows:

Any person, firm, or corporation accepting orders or contracts for doing any work on or in any building or structure iron or steel, sheet iron, galvanized iron, metallic piping, tin, lead, electric wiring, or other steel, or any other building material, or accepting contracts to do any paving or curbing on sidewalks or street, public or private property, using asphalt, brick, stone, cement, wood, or other composition, or accepting orders for or contracts to excavate earth, rock, or other material for foundations or any other purpose, or accepting orders or contracts to construct any sewer of stone, brick, terra cotta, or other material, or accepting contracts to construct highways, bridges, dams, or railroads, shall be deemed a contractor. Every contractor shall procure from the probate judge of the county in which he has his principal office a license to carry on the business of a contractor;

The Taxpayer argues that the installation of plantation shutters is not an activity contemplated by the statute because there is no material change to the structure. The Taxpayer cites a 1960 Revenue Department memorandum involving venetian blinds. That memorandum states that the contractor's license is not applicable unless there is some "material change in or on the building or structure . . .".

This is a close case. However, §40-12-84 broadly imposes a license on any taxpayer "accepting orders or contracts for doing any work on or in any building or structure requiring the use of paint, . . . wood," etc. The Taxpayer is clearly "doing any work on or in any building" when it installs a wood frame, attaches a

wood plantation shutter to the frame, and then paints and/or caulks as necessary. Even the Taxpayer's representative concedes that "Under the broad language of §40-12-84, Plantation does arguably fall within the definition of a construction contractor".

The plain language of the statute must be followed. In State v. George H. Jett Drilling Co., 186 So.2d 925 (1966), the Alabama Supreme Court broadly construed the term "excavate . . . for any other purpose" as set out in §84 to include the excavation necessary in drilling an oil well. Jett was relied on by the Administrative Law Division in holding that the drilling of water wells constituted excavating for any purpose pursuant to §84. State v. Johnny A. Radford, Admin. Law Docket 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. Law Docket Misc. 94-434, decided February 14, 1995. Finally, a landscaper that digs holes to plant trees, shrubs, etc. has been held to be subject to the §84 license. Curry Landscaping v. State, Admin. Law Docket Misc. 94-464, decided August 24, 1995.

As to the "material change" referred to in the 1960 memorandum, that is not a necessary requirement under the statute.

In any case, attaching a wood frame to a window, installing a shutter in the frame, and then caulking and painting, together

cause a material change to the building.

The above considered, the final assessment is affirmed, and judgment is entered against the Taxpayers, Gary L. Allen and Steve T. Womble, for privilege license tax in the amount of \$1,341.82, 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 December 6, 1995.

BILL THOMPSON
Chief Administrative Law Judge