

MEDLINE INDUSTRIES, INC.
One Medline Place
Mundelein, IL 60060-4485,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. F. 97-386

FINAL ORDER

The Revenue Department assessed foreign franchise tax against Medline Industries, Inc. (Taxpayer) for 1994 through 1996. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, ' 40-2A-7(b)(5)a. A hearing was conducted on February 26, 1998. James M. Sizemore, Jr. and Roy S. Goldfinger represented the Taxpayer. Assistant Counsel Jeff Patterson represented the Department.

Issues

The primary issue is whether the Taxpayer was exempt from Alabama foreign franchise tax during the subject years pursuant to the Alabama Enterprise Zone Act (Act), Code of Ala. 1975, ' 41-23-30, et seq. That issue turns on whether the Taxpayer satisfied the employee-related certification requirements set out at ' 41-23-30(c)(6).¹ A second issue is whether the penalty assessed by the Department should be waived for reasonable cause.

Facts

¹The Enterprise Zone Act was amended in 1996 by Act 96-206. The certification requirements currently in ' 41-23-30(c) were in ' 41-23-30(b) before the amendment.

The Taxpayer is headquartered in Mundelein, Illinois. In the early 1990s, various Alabama economic development agencies offered the Taxpayer incentives to move to Alabama. The Taxpayer subsequently opened a facility in Monroe County, Alabama in 1992. As part of the incentive package, the Alabama Department of Economic and Community Affairs (AADECA@) and the Taxpayer contracted pursuant to the Enterprise Zone Act to exempt the Taxpayer from franchise tax for five years, effective October 6, 1992. (Department Ex. A). The contract was dated December 1, 1993. Paragraph (4) of the contract tracked ' 41-23-30(c)(6) of the Act, and required the Taxpayer to certify and update annually that it satisfied certain employee-related criteria for obtaining the exemption. Paragraph (3) of the contract also tracked ' 41-23-30(c)(6), and provided:

AThe contractor (Taxpayer) shall update its certification annually to continue receiving benefits agreed to in this contract and shall be prohibited from receiving benefits for any period of time it is found not to be in compliance with said certification.@

The Taxpayer claimed the 100% exemption on its 1994, 1995, and 1996 Alabama franchise tax returns, which resulted in zero franchise tax due in those years.

On April 17, 1996, the Alabama-Tombigbee Regional Commission (ARegional Commission@), which had helped recruit the Taxpayer to Alabama, wrote the Taxpayer concerning the Taxpayer's Enterprise Zone benefits. (Taxpayer Ex. 7). Enclosed with the letter were employee-related questionnaires, which the Taxpayer completed and returned to the Regional Commission by letter dated July 31, 1996. (Taxpayer Ex. 5).

The Department audited the Taxpayer for franchise tax beginning in July 1996.

ADECA notified the Department by memorandum dated July 11, 1996 that the Taxpayer had failed to update its certification annually to ADECA as required by the December 1, 1993 contract. (Taxpayer Ex. 3, last page). The memorandum concluded that the Taxpayer should not receive any benefits. The Taxpayer also confirmed to the Department auditor that the annual certifications had not been filed. ADECA again notified the Department by memorandum dated September 6, 1996 that the Taxpayer's annual certifications for 1993, 1994, and 1995 had not been filed, and that the Taxpayer is not entitled to the exemption. (Department Ex. E).

On December 16, 1996, the Taxpayer submitted to the Regional Commission a packet of documents. (Taxpayer Ex. 6). The documents were titled "Enterprise Zone Act Certification Information", and included a list of employees hired by the Taxpayer since October 1992, a "Yes" column and a "No" column, and a date, which was presumably the date the employee was hired. The cover letter to the Regional Commission inquired as to whether this is the best way to present our information to the State of Alabama in order to qualify for the Alabama Enterprise Zone Act.

Because the Taxpayer failed to file the annual certifications with ADECA, the Department disallowed the exemption in each year and entered the final assessment in issue in August 1997. In November 1997, the Taxpayer submitted to ADECA the five annual certifications for the fiscal years ending October 6, 1993 through October 6, 1997. (Taxpayer Ex. 4). The certifications were submitted on a form prepared by ADECA for that purpose.

Analysis

The Taxpayer argues that the actual filing of an annual certification document with ADECA is not required by the Act. Rather, the Taxpayer contends it complied with the Act by (1) maintaining on file the employee questionnaires that it submitted to the Regional Commission in July 1996, and (2) submitting the additional Enterprise Zone information to the Regional Commission in December 1996. I disagree.

ACertify@is defined as A[t]o confirm formally as true, accurate, or genuine, esp. In writing@. American Heritage Dictionary, Second College Ed., at p. 255. By requiring a business claiming the exemption to certify that it satisfied certain employee-related requirements, the Legislature clearly intended for the business to confirm that fact by filing a written certification with ADECA. ADECA certainly understood that a certification document had to be filed, and created a certification form for that purpose. When the Taxpayer failed to file the initial certification and the annual updates, ADECA notified the Department that the exemption should not be allowed.

An actual filing with ADECA is required. Maintaining individual employee information on file, and later submitting that information to the Regional Commission, as the Taxpayer did in July and December 1996, does not constitute a certification to ADECA. Certainly, it does not constitute an annual update.

Even if the information submitted to the Regional Commission constituted a certification as required by the Act, the Taxpayer still would not be entitled to the exemption for the years in issue. A foreign corporation's Alabama franchise tax liability

is fixed on January 1 of the subject year. International Paper Co. v. Curry, 9 So.2d 8 (1942). Consequently, for the Enterprise Zone exemption to apply, a foreign corporation must have filed its initial certification or an annual update within one year before January 1 of the subject year. The Taxpayer filed the employee information with the Regional Commission in July and December 1996, after the January 1 tax date for 1996, the last year in issue. Filing a certification document after the fact does not satisfy the annual update requirement of ' 41-23-30(c)(6).

There is some question among the parties as to when the annual update must be filed. Section 41-23-30(c)(6) does not specify a calendar date. But a specific calendar date is not necessary. Rather, a business must initially certify to ADECA that it meets the criteria for the exemption. The annual certification update must be filed with ADECA within one year from that initial certification date.

The Taxpayer's 1994, 1995, and 1996 Alabama franchise tax liabilities were fixed on January 1 of each year. It is undisputed that the Taxpayer failed to file its initial certification or any annual updates with ADECA until November 1997. Consequently, the exemptions were correctly disallowed by the Department.

In Hispan v. State, Dept. of Revenue, 709 So.2d 1233 (Ala.Civ.App.1997), the State of Alabama offered Hispan various incentives to move to Alabama, including the franchise tax exclusion provided at Code of Ala. 1975, ' 40-14-41(d)(2)d. (Now repealed). Hispan invested 136 million dollars in Alabama, and claimed the exclusion. Unfortunately, Hispan and the State failed to enter into an agreement for the investment of the money,

and Hispan failed to obtain a qualification certificate, both as required by the statute.

Although Hispan otherwise qualified for the exemption, the Department denied the exemption because Hispan failed to comply with the technical requirements of the statute. The Court of Civil Appeals affirmed. Although the statutory requirements in issue in

Hispan are different from the statutory requirements the Taxpayer failed to comply with in this case, the principle is the same:

AClearly, the statute is very specific regarding the prerequisites and conditions that a taxpayer must meet in order to obtain a qualification certificate. It is well settled that words in a statute should be given their plain, ordinary, and commonly understood meaning.= McGuire Oil Co. v. MAPCO, Inc., 612 So.2d 417, 422 (Ala. 1992). Further, if the language of a statute is unambiguous, then there is no room for judicial construction and the clearly expressed intent of the legislature must be given effect.= McGuire Oil Co., 612 So.2d at 423.@

* * *

Alt is indeed regrettable that [Hispan] made a very substantial capital investment in Morgan County without first entering into an agreement with the State and obtaining a qualification certificate. The court, however, finds no exceptions to these specific requirements set forth in '40-14-41(d)(2)d. and has no legal authority to employ a remedy which ignores them. The taxpayer had failed to carry its burden to prove that it is qualified for the exemption from franchise tax during the years 1990 and 1991.@

* * *

AThis court, too, emphasizes its compassion for the harsh effect that has been imposed upon Hispan in the instant case. However, as stated by the trial court, the statute does not provide for any exceptions to the specific requirements set forth by the statute.@
Hispan, 709 So.2d at 1235.

As did the Court of Civil Appeals in Hispan, I sympathize with the Taxpayer, but the Department cannot ignore the clear requirements of the Act, as written by the Legislature.

The final assessment includes a penalty of \$22,307.79. A penalty may be waived for reasonable cause. Code of Ala. 1975, '40-2A-11(h). The Taxpayer satisfied the

requirements for obtaining the exemption, except for its presumably inadvertent failure to file the annual certifications with ADECA. Under the circumstances, reasonable cause exists to waive the penalty in this case.

The final assessment, less the penalty, is affirmed. Judgment is entered against the Taxpayer for \$83,411.92, 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 October 14, 1998.

BILL THOMPSON
Chief Administrative Law Judge

BT:ks

cc: Jeff Patterson, Esq.
Roy Goldfinger, Esq.
James M. Sizemore, Esq.
Voncile Catledge
Ray Royster