

TIMOTHY P. JOHNSON
d/b/a The Cue Club
P.O. Box 315
Collinsville, AL 35961,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. MISC. 02-875

FINAL ORDER

The Revenue Department assessed Timothy P. Johnson (“Taxpayer”), d/b/a The Cue Club, for privilege license tax for the fiscal year ending September 30, 2002. 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 April 25, 2003 in Birmingham, Alabama. The Taxpayer attended the hearing. Assistant Counsel Glen Powers represented the Department.

The issue in this case is whether the Taxpayer’s business was subject to the annual privilege license tax levied on pool tables at Code of Ala. 1975, §40-12-146.

The Taxpayer operated a private club in Collinsville, Alabama during the fiscal year ending September 30, 2002. He charged an annual membership fee of \$1.

The Taxpayer maintained seven pool tables at the club during the subject year. He charged the club members to play on the tables. He also sold soft drinks, snacks, and billiard accessories at the club.

The Department cited the Taxpayer for failing to have a store license (Code of Ala. 1975, §40-12-315), a soft drink license (Code of Ala. 1975, §40-12-69(a)), and a pool table license (§40-12-146). The Taxpayer paid the store and soft drink licenses, but disputes

that he is liable for the pool table license.

Section 40-12-146 levies an annual privilege license tax on pool tables, as follows:

For each pool table upon which the game of pin pool, bottle pool or starboard pool, or other like device is played, there shall be paid a license tax of \$100. For each table upon which the game of pool or billiards is played with 15 balls or more or less, and not pin pool, there shall be paid a license tax of \$25. The provision of this section shall not apply to pool or billiard tables operated or owned by private individuals and used in their homes or pool or billiard tables operated or owned by private clubs, social clubs, or Y.M.C.A.'s when no charge is made for playing thereon.

The Taxpayer argues that his business is exempt from the above licensing provision either by Code of Ala. 1975, §34-6-15 or the last sentence of §40-12-146.

Section 34-6-15 is in Chapter 6 of Title 34, Code of Ala. 1975, which includes various regulatory provisions relating to billiard rooms. Section 34-6-3 authorizes incorporated cities and towns to license billiard rooms. However, §34-6-15 provides an exemption, as follows:

The provisions of this chapter shall not be construed to include billiard tables or billiard rooms operated by industrial concerns for the exclusive use of their employees, Young Men's Christian Association, religious orders, charitable institutions, state, county or city institutions, fraternal orders or bona fide clubs using such tables for employees or members only.

The Taxpayer argues that because he operates a bona fide club, §34-6-15 exempts him from the licensing provision at §40-12-146. I disagree. Section 34-6-15 only exempts bona fide clubs from "the provisions of this chapter," i.e. the municipal licensing and other regulatory provisions in Chapter 6 of Title 34. It does not exempt clubs from the State licensing provision at §40-12-146.

The last sentence of §40-12-146 also does not exempt the Taxpayer's business from the State licensing provision. That sentence provides that the State license does not apply

to “billiard tables operated or owned by private clubs, social clubs, or Y.M.C.A.’s when no charge is made for playing thereon.”

The Taxpayer argues that the phrase “when no charge is made for playing thereon” modifies only “Y.M.C.A.’s,” and does not relate to “private clubs.” He thus contends that all private clubs are exempt, even if they charge for play on the tables. I disagree.

An exemption or exclusion from tax must be strictly construed against the taxpayer. *Bean Dredging Corp. v. State of Alabama*, 454 So.2d 1009 (Ala. 1984). Applying that rule of construction, the exclusion in §40-12-146 must be construed to apply only when a private club, a social club, or a Y.M.C.A. owns pool tables and does not charge its members for using the tables. That exemption does not apply in this case because the Taxpayer’s club members pay to use his tables.

The final assessment of the §40-12-146 license tax is affirmed. Judgment is entered against the Taxpayer for \$323.67, 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 July 9, 2003.