

## ALABAMA TAX TRIBUNAL

EXOTIC IMPORTED CARS, LLC,	§	
Petitioner,	§	DOCKET NO. MV. 19-466-JP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

### OPINION AND FINAL ORDER

In March 2017, Exotic Imported Cars, LLC (“Petitioner”), applied for an automobile dealer’s license with the Alabama Department of Revenue. That application was granted and the license was issued to the Petitioner. In March 2019, the Revenue Department revoked the license. The Petitioner appealed the revocation to the Alabama Tax Tribunal.

#### Question Presented

Did the Petitioner show by a preponderance of the evidence that the Revenue Department lacked sufficient grounds to revoke the Petitioner’s dealer’s license.

#### Facts

In January 2019, the Revenue Department began an investigation of the Petitioner’s business because of a complaint received from law-enforcement personnel in Waterbury, Connecticut. Specifically, a police report stated that a Waterbury resident had been stopped by Waterbury police while driving a car whose license plate was an Alabama dealer’s plate that was registered to the Petitioner. According to Mr. Allen Scarbrough with the Revenue Department, the police report stated that the Waterbury resident had purchased the plate, believing that his purchase entitled him to use the plate and not understanding that the plate still belonged to the Petitioner. Mr. Scarbrough testified that

dealer's plates are not to be used by anyone other than the dealer or his agents and are not to be sold. The Petitioner's owner, Mr. Rizwan Poonawalla, acknowledged during the hearing that the dealer's plate on the vehicle in Waterbury was registered to the Petitioner. But Mr. Poonawalla would not tell the Tax Tribunal how the plate made its way onto the car of a Connecticut resident, despite repeated and direct questioning by the court.

After receiving the police information, Mr. Scarbrough visited the address of the Petitioner's Birmingham business location. There was a separate business being operated at the location, but there was no sign identifying the Petitioner's car dealership and there was no business activity of the Petitioner. The attendant who was present on behalf of the other business knew nothing about the Petitioner's business. Mr. Scarbrough spoke with Mr. Poonawalla by phone about the lack of a sign, and Mr. Poonawalla told Mr. Scarbrough that he was moving his business to an address in Ensley. When Mr. Scarbrough arrived at the Ensley address, there was no business being done by the Petitioner at that location, either. There were no vehicles for sale on the premises and there was no sign identifying the business. Instead, the business at that location was a gas station, which was attended by Mr. Poonawalla's mother.

Mr. Scarbrough testified that, since January 2019, he visited the two locations at least four or five times but never found Mr. Poonawalla at either location. Also, Mr. Poonawalla was notified that he was being investigated and that he was required to present his business records, but Mr. Poonawalla never presented his business records or dealer plates to Mr. Scarbrough. Instead, Mr. Poonawalla told Mr. Scarbrough that his records were in Florida.

On cross examination, Mr. Scarbrough acknowledged that a vehicle that is

purchased in another state can bear an Alabama dealer's plate while that vehicle is being driven from the other state to Alabama. But the Petitioner offered no evidence that those were the circumstances of its dealer's plate being found on a car in Waterbury, Connecticut. Instead, as stated, the owner of that car apparently was a resident of Connecticut.

By email dated March 21, 2019, the Revenue Department notified the Petitioner that its dealer's license was revoked, pursuant to Ala. Code § 40-12-396(b). Although the reason given in the email was the lack of an active sales-tax account, the Petitioner insisted that its sales-tax account was open. And, the Revenue Department did not produce any conclusive evidence that the account actually had been closed. Nevertheless, Mr. Scarbrough stated that his main concern was to inspect the Petitioner's location and business records to determine if the Petitioner was doing business in good faith. In summary, Mr. Scarbrough testified that, in his opinion, the Petitioner's business was a facade based on the lack of a sign, the lack of cars for sale, and the lack of records at the Birmingham location.

Another Revenue Department witness, Mr. David Baxley, testified that the email to the Petitioner regarding the account closing came from the Revenue Department's Motor Vehicle Division, but that information regarding the closing of sales-tax accounts comes from the Sales Tax Division. Generally, once the Sales Tax Division notifies the Motor Vehicle Division that a sales-tax account has been closed, the Motor Vehicle Division's License Section sends an email notifying the business that its dealer's license has been revoked.

However, Mr. Baxley testified that the email sent to the Petitioner regarding its sales-tax account was completely separate from the investigation conducted by Mr. Scarbrough and that there were other reasons for revoking the Petitioner's license. Specifically, in the words of Mr. Baxley, the Petitioner was given a "report of statutory compliance regarding the investigation of his locations, and that [report] referenced his license being revoked."

Mr. Baxley also stated that there are two types of dealer's licenses – wholesale and retail. A wholesale license does not require an open sales-tax account. The Petitioner originally applied for a wholesale license, which provided the Petitioner with access to dealer's plates. The Petitioner opened a sales-tax account in 2018 to make retail sales, but no such sales were reported between 2018 and March of 2019.

Mr. Scarbrough testified that he mailed and emailed the "report of statutory compliance" to the Petitioner at the address listed on the Petitioner's application, but Mr. Poonawalla stated that he did not receive the report by mail or email. Mr. Scarbrough also testified that he had more than one phone conversation with Mr. Poonawalla regarding the lack of a sign and the lack of cars and business records and dealer's plates at the business location. Mr. Poonawalla acknowledged having those conversations with Mr. Scarbrough and acknowledged that he was told that his license was going to be revoked because of those compliance issues.

#### Law and Analysis

A motor vehicle dealer is required to have a permanent business location that offers sufficient space for the display of vehicles offered for sale and that contains a sign designating that location as the place of business of a motor vehicle dealer. Ala. Code § 40-12-392(a). The location also must be suitable for the conducting of business in good

faith and for the maintenance of necessary books and records, “which shall be available at all reasonable hours for inspection by the commissioner.” *Id.*

If a license is issued, the Revenue Commissioner “may, subject to the appeal provisions allowed in Chapter 2A of this Title 40, suspend or revoke any license issued for the willful and intentional failure of the licensee to comply with the provisions of this article or for the willful failure to maintain the business premises, location, and sign as described in the application.” § 40-12-396(a). Paragraph (b) of § 396 lists specific reasons for which a license may be revoked.

Section 40-2A-8(a) authorizes one whose license has been revoked by the Revenue Department to appeal to the Alabama Tax Tribunal. Such an appeal is commenced by filing a notice of appeal. § 40-2B-2(h)(1). “In the case of an issue of fact, the taxpayer shall have the burden of persuasion by a preponderance of the evidence in the record, except that the Department of Revenue shall have the burden of persuasion in the case of an assertion of fraud and in other cases provided by law.” § 40-2B-2(k)(7).

Here, the Tax Tribunal heard testimony from multiple witnesses, including the Petitioner’s owner, and had the opportunity to question those witnesses. It is clear from the record that the Petitioner has not met its burden of persuading the Tax Tribunal that the Revenue Department lacked sufficient grounds for revoking the Petitioner’s license. As detailed, the Petitioner did not show that it maintained its place of business as to a sign or as to the maintenance and presentation of business records or dealer’s plates, any one of which constituted sufficient ground for the Department’s action.

### Conclusion

The Revenue Department’s decision to revoke the Petitioner’s motor vehicle

dealer's license is upheld. All of the various motions filed by the Petitioner during the pendency of this appeal, such as requests for discovery and for a judgment of acquittal, are denied. It is so ordered.

This Final Order may be appealed to circuit court within 30 days, pursuant to Ala. Code § 40-2B-2(m).

Entered March 18, 2020.

*/s/ Jeff Patterson*

JEFF PATTERSON

Chief Judge

Alabama Tax Tribunal

jp:dr

cc: Rizwan Poonawalla  
Keith Maddox, Esq.