

MICHAEL KITZINGER  
M&S AUTOMOTIVE  
60 HIGHWAY 41 NORTH  
CAMDEN, AL 36726,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. INC. 04-705

### FINAL ORDER

The Revenue Department assessed Michael Kitzinger ("Taxpayer"), d/b/a M&S Automotive, for scrap tire environmental fees for September 2003 through February 2004. 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 October 19, 2004. The Taxpayer attended the hearing. Assistant Counsel John Breckenridge represented the Department.

The Taxpayer is in the automotive repair business and also sells tires at retail in Wilcox County, Alabama. He received used/scrap tires from those persons to whom he sold tires at retail. Pursuant to Code of Ala. 1975, §22-40A-14(a), effective September 1, 2003, all businesses selling tires and receiving scrap or used tires in return are required to charge the purchaser a \$1 fee per tire.

Sometime after October 1, 2003, a Department agent contacted the Taxpayer concerning compliance with the above statute. The Taxpayer responded that he had never been notified of the statute. As requested by the Department, the Taxpayer subsequently filed the required returns for September 2003 through February 2004.<sup>1</sup> The Department assessed the Taxpayer for the reported tax due in those months, plus late penalties and interest. The Taxpayer appealed.

Code of Ala. 1975, §22-40A-14(a) states that “[a] scrap tire environmental fee shall be collected at the point of sale from the consumer on replacement tires, whether or not the tires are mounted on a rim or wheel, in the amount of one dollar (\$1) per tire, and shall be remitted to the Department of Revenue on a monthly basis.” The Taxpayer was clearly liable for the \$1 per tire fee levied at §40-40A-14(a). Consequently, the tax assessed by the Department based on the Taxpayer’s signed returns must be affirmed.

The Taxpayer complains that he should have been notified of the fee before its September 1, 2003 effective date. The Department attempted in good faith to notify all known tire dealers of the new fee by public notice and also by letter. Unfortunately, the Taxpayer is primarily an automotive repair shop, not a tire dealer. Consequently, he did not receive a notice from the Department concerning the fee. The Department is correct, however, that the Taxpayer’s ignorance of the law cannot relieve him of liability for the tax due.

The Department also assessed the Taxpayer for late filing and late payment penalties. A penalty may be waived for reasonable cause. Code of Ala. 1975, §40-2A-11(h). The Taxpayer did not knowingly fail to comply with the law. Under the circumstances, the penalty is waived for reasonable cause. Interest is required by statute and cannot be waived. Code of Ala. 1975, §40-1-44.

The final assessment, less the penalty, is affirmed. Judgment is entered against the Taxpayer for tax and interest of \$722.05. Additional interest is also due from the date of entry of the final assessment, July 7, 2004.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of

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<sup>1</sup> The Taxpayer has also properly filed all returns since February 2004.

Ala. 1975, §40-2A-9(g).

Entered October 25, 2004.

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BILL THOMPSON  
Chief Administrative Law Judge