

KIRK HOUSE, INC.
P.O. BOX 175
AXIS, AL 36505,

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§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. MISC. 05-394

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER

The Revenue Department denied a refund of privilege license tax requested by Kirk House, Inc. ("Taxpayer") for the fiscal years beginning in October of 2001, 2002, and 2003. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(c)(5)a. A hearing was conducted on August 23, 2005 in Mobile, Alabama. Ruth Schmohl represented the Taxpayer. Assistant Counsel Duncan Crow represented the Department.

The Taxpayer sells unique ceramic artwork created by hand by Ms. Mary Kirk Kelly. The Taxpayer's retail outlet is located in Axis, in Baldwin County, Alabama. The Taxpayer obtained the annual "store" license required by Code of Ala. 1975, §40-12-315 during the fiscal years in issue. The Department determined that the Taxpayer was also required to obtain the annual "mill" license specified in Code of Ala. 1975, §40-12-87. The Taxpayer paid the §87 license amounts for the years in issue, and then petitioned for a refund. The Department denied the refund. The Taxpayer appealed.

Section 40-12-87 is entitled "Cottonseed oil mills, cotton mills, factories, etc." It levies an annual license tax on the following:

Every person operating a cottonseed oil mill; cotton mill; cloth mill; towel factory; garment factory; yarn mill; hosiery mill; peanut mill; peanut oil mill; peanut shelling plant; paper mill; pulp mill; mill manufacturing sheeting,

rugs, bags, hats, cement, carpets, lime, plaster, soap, chemical, acid (other than fertilizer) explosive; and all mills manufacturing any finished or semifinished products of tobacco, thread, yarn, cloth, fur, felt, nylon, paper, jute, rubber, iron, iron ore, copper, brass, tin, coal, coke, sand, cement, glass, clay, slag, aluminum, bauxite, ore, grain, other than what is commonly called a grist mill, oats, corn, rye, synthetic rubber, stone, oil, crude oil, tar, resin, asphalt, paraffin, plastics, fibers, straw, cellulose, or other factory where materials are woven, made, or assembled, shall pay the following license tax . . .

The Department's position is that the Taxpayer is subject to the §87 license because it sells ceramic clay artwork produced by hand. I disagree.

"Mill" is defined by The American Heritage Dictionary, fourth edition, at p. 882, as "[a] building or group of buildings equipped with machinery for processing raw materials into finished or industrial products; a textile mill. A building or collection of buildings that has machinery for manufacture; a factory."

Mary Kirk Kelly, who is elderly and physically frail, uses clay to create her unique pieces of beautiful ceramic artwork. The record does not reflect what tools, if any, Ms. Kelly uses in creating her pieces. In any case, while Ms. Kelly does technically process or mold a raw material, i.e., clay, into a finished product, she does not do so within a mill, as that term is defined above. A little old lady making unique ceramic art objects one at a time does not constitute a mill or factory that is manufacturing clay products. The §87 "mill" license thus does not apply.

The above holding is supported by the rule of statutory construction that a tax levy statute must be strictly construed for a taxpayer and against the government. *State v. Calumet and Hecla, Inc.*, 206 So.2d 354 (Ala. 1968). The Department is directed to issue the Taxpayer a refund of the §87 license tax in issue, 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 August 30, 2005.

BILL THOMPSON
Chief Administrative Law Judge