

BILLY RAY BAILEY §
D/B/A BAILEYS PAINT CONTRACTORS §
106 EAST ROXBURY ROAD §
DOTHAN, AL 36305, §

Taxpayer, §

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE. §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 06-516

FINAL ORDER

The Revenue Department assessed Billy Ray Bailey (“Taxpayer”), d/b/a Bailey’s Paint Contractors, for privilege license tax for October 2002 through September 2005. 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 September 20, 2006. The Taxpayer was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Margaret McNeill represented the Department.

The Department received information that the Taxpayer worked as a painting contractor in Houston County, Alabama during the subject period. It cited the Taxpayer for failing to have a contractor’s license as required by Code of Ala. 1975, §40-12-84. It also requested that the Taxpayer respond concerning his gross receipts. The Taxpayer failed to respond. The Department consequently entered a preliminary assessment for the maximum license due.¹ The Taxpayer again failed to respond. The Department subsequently entered the final assessment in issue for the maximum license amount. The Taxpayer appealed.

¹ The privilege license tax is for graduated amounts and is based on gross receipts. The more receipts, the higher the license tax.

Section 40-12-84 requires that any person “accepting orders or contracts for doing any work on or in any building or structure requiring the use of paint, stone, brick, mortar, wood, cement, structural iron or steel, sheet iron, galvanized iron, . . . shall be deemed a contractor.” That statute levies a privilege license tax based on the contractor’s gross receipts. The minimum license is \$10 for receipts between \$5,000 and \$10,000. The maximum is \$250 per year if gross receipts exceed \$200,000.

The Taxpayer argues that he is not liable for the contractor’s license because “I do not work off of a contract, just an agreement on the hourly rate.” See, Taxpayer’s notice of appeal. However, performing work pursuant to an oral agreement or contract with a customer makes the Taxpayer a “contractor” within the scope of §40-12-84. A written contract is not required.

A final assessment based on the best information is *prima facie* correct, and the burden is on a taxpayer to prove that the assessment is incorrect. Code of Ala. 1975, §40-2A-7(b)(5)c. As indicated, the Taxpayer failed on numerous occasion to respond to the Department’s inquiries. He also failed to attend the September 20 hearing, or otherwise prove that he is not a contractor within the purview of §40-12-84.

The *prima facie* correct final assessment is affirmed. Judgment is entered against the Taxpayer for \$1,452.51. Additional interest is also due from the date of the final assessment, April 25, 2006.

The Taxpayer may apply for a rehearing within 15 days and submit evidence establishing his gross receipts in the subject years. If the gross receipts amounts are accepted by the Department and warrant a reduction to the graduated license levied at

§40-12-84, the final assessment will be reduced accordingly. Otherwise, this Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered September 21, 2006.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Margaret Johnson McNeill, Esq.
Billy Ray Bailey
Curtis Stewart
Janet Stathopoulos