

SOUTHEASTERN MARBLE MFG., INC. §
D/B/A SOUTHERN MARBLE
786 S. OATES STREET §
DOTHAN, AL 36301, §

Taxpayer, §

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE. §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 06-785

**FINAL ORDER DENYING DEPARTMENT'S
APPLICATION FOR REHEARING**

The Department has applied for a rehearing in this case concerning the penalties waived for cause in the February 21, 2007 Final Order. The Department contends that the penalties cannot be waived because they were assessed pursuant to Code of Ala. 1975, §40-12-10(e), not Code of Ala. 1975, §40-2A-11. It also argues that even if the penalties can be waived for cause, reasonable cause did not exist in this case. I disagree.

The Department is correct that Alabama's appellate courts have held in several cases that the §40-12-10 penalty is mandatory. See, *State v. Mack*, 411 So.2d 799 (Ala. Civ. App. 1982). Those cases were decided, however, before the Alabama Legislature enacted Code of Ala. 1975, §40-2A-11(h). That section specifies that "no penalty under this title (Title 40, Code 1975) . . . shall be assessed, or if assessed, shall be waived upon a determination of reasonable cause." The §40-12-10 penalty is levied in Title 40. Consequently, the express language used by the Legislature in §40-2A-11(h) indicates that the §40-12-10 penalty can be waived for reasonable cause. See generally, *Wilks Tire & Battery Service v. State of Alabama*, Misc. 01-255 (Admin. Law Div. 7/27/2001).

The Taxpayer's owner had purchased the §40-12-84 contractors license for a prior business. He testified at the February 13 hearing that he did not obtain the contractors

license for his current business because the business had a manufacturer's license when he purchased it several years ago. He stated that he was unaware that the business would need both licenses.

Ignorance of the law cannot relieve a taxpayer from a legally due tax, which is why the license tax in issue was affirmed in the February 21 Final Order. Not knowing that a tax is due may, however, constitute reasonable cause to waive a penalty. In this case, the business had one license and the owner explained that he did not know that the business would need a second license. The owner was incorrect, but under the circumstances, the associated penalties should be waived for cause. The Department's Application for Rehearing is denied. The February 21, 2007 Final Order is affirmed.

This Final Order Denying Department's Application for Rehearing may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered March 13, 2007.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

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