

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

The Revenue Department assessed Southeastern Marble Manufacturing, Inc., d/b/a Southern Marble ("Taxpayer"), for license tax for the fiscal years ending September 2003, September 2004, and 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 February 13, 2007. The Taxpayer's owner, Ken McCorkel, attended the hearing. Assistant Counsel Wade Hope represented the Department.

McCorkel purchased Southeastern Marble Manufacturing, Inc. in May 2001. He had previously owned and operated McCorkel Construction. Southeastern Marble installs sinks, countertops, etc. and performs other contracting work.

The Department cited Southeastern Marble in August 2005 for failing to obtain the contractor's license levied at Code of Ala. 1975, §40-12-84. The citation was for the license years ending in September of 2003, 2004, and 2005.

McCorkel does not dispute that his business is subject to the contractor's license. He argues, however, that he was not aware of the license until he was contacted by the Department in early 2005. He contends that he will pay for the license year ending September 2005, but that he should not be required to pay for the two prior years because

the Department did not notify him at the time that the license was required. McCorkel's appeal reads in part – "Until I met with him (the Department examiner) I did not know that I even needed this license. If I did not know and the State did not notify me at that time, then I do not owe the State for those two periods of time."

It is undisputed that the Taxpayer was liable for the §40-12-84 contractor's license during all three years in issue. As indicate, the Taxpayer claims he should be relieved of liability because the Department did not contemporaneously notify him that the license was due. I disagree.

The Department cannot be estopped from collecting a tax that is legally due, even if a Department employee erroneously informed the taxpayer that the tax was not due and the taxpayer relied on that statement. *State v. Maddox Tractor and Equipment Co.*, 69 So.2d 426 (1953). Clearly, the Department also cannot be estopped from collecting a legally due tax because the Department did not notify the taxpayer that the tax was due.

The Taxpayer's owner was aware of the §40-12-84 license because he had obtained that license for his prior business. He indicated at the February 13 hearing, however, that when he bought Southeastern Marble, the business had a manufacturer's license. He thought that license was sufficient, and thus did not also obtain the contractor's license. Both licenses were due because of the different activities engaged in by the business. However, the penalties in issue should be waived for cause under the circumstances.

The final assessment, less the penalties, is affirmed. Judgment is entered against the Taxpayer for \$1,298.38. Additional interest is also due from July 5, 2006.

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

Ala. 1975, §40-2A-9(g).

Entered February 21, 2007.

---

BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: J. Wade Hope, Esq.  
Ken McCorkel  
Curtis Stewart  
Joe Cowen