

BROCK, LLC, A Partnership and its	§	STATE OF ALABAMA
Partners John G. Brock & Phyllis Brock		DEPARTMENT OF REVENUE
P.O. Box 1054	§	ADMINISTRATIVE LAW
DIVISION		
Evergreen, AL 36401-1054,		
	§	
Taxpayers,		DOCKET NO. MISC. 00-480
	§	
v.		
	§	
STATE OF ALABAMA		
DEPARTMENT OF REVENUE.	§	

FINAL ORDER

The Revenue Department assessed Brock, LLC, and its partners John G. Brock and Phyllis P. Brock, for the penalty levied at Code of Ala. 1975, §40-12-29. John G. Brock (“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 15, 2001. The Taxpayer attended the hearing. Assistant Counsel Wade Hope represented the Department.

ISSUE

The issue in this case is whether the Department properly assessed the Taxpayer for the penalty levied at Code of Ala. 1975, §40-12-29; and, if so, should the penalty be waived for reasonable cause.

FACTS

The Taxpayer practices law in Evergreen, Alabama. He is also a licensed motor vehicle dealer, and owns a used car business at 200 Pecan Street in Evergreen. During the year in issue, the Taxpayer displayed several used cars for sale in a shopping center parking lot owned by a friend. The friend had asked the Taxpayer to display the cars to attract customers to the shopping center. Several other individuals also periodically displayed their personal vehicles for sale at the location.

The Department determined that the Taxpayer was improperly operating a used car business at the parking lot because (1) he did not have an appropriate sign at the location, and (2) there was no building or other suitable place from which the Taxpayer could conduct business and keep records. Code of Ala. 1975, §40-12-392. The Department issued the Taxpayer a notice of non-compliance. The Taxpayer failed to respond. The Department consequently assessed the Taxpayer the maximum \$1,000 penalty levied at §40-12-29 for failing to comply with §40-12-392. The Taxpayer appealed. He has also removed his vehicles from the parking lot.

ANALYSIS

Section 40-12-392 requires a motor vehicle dealer to have an appropriate sign designating the location as a motor vehicle dealership. The location also must be a suitable place from which business can be conducted, and where records can be maintained relating to the business.

The Taxpayer contends he never conducted business at the shopping center parking lot, and was unaware that he could not display vehicles at the location. He argues that he is being treated unfairly by the Department because other individuals also display vehicles for sale at the location.

As a licensed motor vehicle dealer, the Taxpayer is required to comply with the licensing provisions of §40-12-392. He complied concerning his primary location at 200 Pecan Street in Evergreen. He failed, however, to comply concerning the vehicles he offered for sale at the shopping center parking lot. The Taxpayer can operate an additional place of business, but he would be required to obtain a supplemental license and comply with the §40-12-392 licensing requirements at the additional location. Code of Ala. 1975, §40-12-395. By not complying with §40-12-392 concerning the vehicles offered for sale

at the shopping center, the Taxpayer technically violated the statute, and was thus subject to the §40-12-29 penalty.¹

Any penalty levied in Title 40, Code 1975 may be waived for reasonable cause. Code of Ala. 1975, §40-2A-11(h). Reasonable cause includes instances in which a taxpayer acts in good faith, which includes honest, non-recurring mistakes. Rev. Proc. 97-003.

The Taxpayer in this case was unaware that he was required to comply with §40-12-392 when he offered vehicles for sale at the shopping center parking lot. The Taxpayer should have responded immediately when first contacted by the Department. But the Taxpayer has now removed the vehicles from the lot. Under the circumstances, his failure to comply with the licensing provisions constituted an honest, non-recurring mistake. The penalty is thus waived for reasonable cause. The final assessment in issue is dismissed.

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

Entered March 1, 2001.

¹As indicated, the Taxpayer argues that other individuals also had vehicles for sale at the shopping center location. However, an individual that is not in business as a licensed motor vehicle dealer is not required to comply with the motor vehicle licensing provisions, and thus may advertise personal vehicles for sale without complying with §40-12-392.