

CURTIS J. ELZIE	§	STATE OF ALABAMA
D/B/A ELZIE ENTERPRISES/ AT YOUR SERVICE	§	DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
421 BASKIN STREET SOUTH UNION SPRINGS, AL 36089,	§	
Taxpayer,	§	DOCKET NO. MISC. 07-918
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

FINAL ORDER

The Revenue Department assessed Curtis J. Elzie (“Taxpayer”), d/b/a Elzie Enterprises/At Your Service, for privilege license tax for October 2004 through September 2007. 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 21, 2008. The Taxpayer attended the hearing. Assistant Counsel Wade Hope represented the Department.

The Taxpayer has a place of business in Union Springs, Alabama. A permanent sign at the business reads “Elzie’s Used Cars.” The sign also included the words “Title Pawn.” At Your Service Elzie’s Enterprises was also listed under “mortgages” in the Union Springs yellow pages during the period in issue. Based on the sign at the location and the yellow pages listing, the Department determined that the Taxpayer was operating as a pawnbroker, and thus liable for the annual pawnbroker license levied at Code of Ala. 1975, §40-12-138. It assessed the Taxpayer accordingly.

The Taxpayer testified at the February 21 hearing that he is licensed as a used car dealer, and that he also distributes and services ATM machines. He claimed that he is not and has never been a pawnbroker or in the title pawn or mortgage business. He explained that he ordered the sign in issue in 2004, but that it remained in a crate at his business for

over a year. Only when he erected the sign in late 2005 or 2006 did he realize that it incorrectly showed that he was in the title pawn business. He contacted the sign company, and was told that the company would change the sign, but it never did.

Concerning the yellow page listing, the Taxpayer explained that an individual started working with him in 2002. The individual was interested in the mortgage business. The individual consequently had the business listed in the "mortgages" section in the local yellow pages. The Taxpayer testified, however, that the individual left after a couple of months, and that while the business is still listed in the "mortgages" section in the yellow pages, he has never paid to keep or renew the listing.

The Department reasonably assumed based on the sign at the Taxpayer's business and the listing in the yellow pages that the Taxpayer was in business as a pawnbroker in the subject years. The Taxpayer forthrightly and persuasively testified, however, that he has never been a pawnbroker or otherwise engaged in the title pawn business. The Department also has no evidence showing that the Taxpayer has ever actually engaged in or conducted business as a pawnbroker.

It would be simple to verify if the Taxpayer was actually doing business as a pawnbroker in a small town such as Union Springs because the Taxpayer would have pawned items offered at his business for sale to his customers. And if the Taxpayer was in the title pawn business, he would have customers entering his business for that purpose. He would also presumably have records evidencing each title pawn transaction. No such evidence establishing or verifying the above activities was submitted into evidence. In short, the fact that the Taxpayer had a sign reading "Title Pawn" at his business, without

more, is insufficient to prove that he was actively engaged in business as a pawnbroker.

The final assessment is voided.

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

Entered April 10, 2008.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: J. Wade Hope, Esq.
Curtis J. Elzie
Joe Cowen
Janet Stathopoulos
Curtis Stewart