

AUTO TECH  
2865 HIGHWAY 128  
SAVANNAH, TN 38372,

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

Petitioner,

§

DOCKET NO. S. 07-940

v.

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

§

### **FINAL ORDER GRANTING PETITIONER'S APPLICATION FOR REHEARING**

Auto Tech ("Petitioner") appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-8(a) concerning the Department's refusal to issue it an Alabama buyer's identification card. A Final Order was entered on January 14, 2008 affirming the refusal because the Petitioner failed to respond to a Preliminary Order. The Petitioner timely applied for a rehearing.<sup>1</sup> A hearing was conducted on March 14, 2008. Johnny Bellis represented the Petitioner. Assistant Counsel Wade Hope represented the Department.

The Petitioner has for several years operated as a licensed motor vehicle dismantler and parts recycler in Savannah, Tennessee. Before 2007, the Alabama Revenue Department routinely renewed the Petitioner's Alabama buyer's identification card, which allowed it to purchase vehicles at salvage sales in Alabama.

The Petitioner applied to the Department to again renew its Alabama buyer's identification card in September 2007. The Department requested that the Petitioner submit a copy of the bond required by Tennessee to conduct business as an automotive dismantler and parts recycler in that State. The Petitioner was unable to submit a

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<sup>1</sup> The Petitioner's representative indicated in its application for rehearing that the Petitioner did not timely respond to the Preliminary Order because it never received the Order.

Tennessee bond because Tennessee law does not require automotive dismantlers to be bonded. The Department consequently refused to renew the Petitioner's Alabama buyer's identification card. The Petitioner appealed.

Code of Ala. 1975, §40-12-421(a) provides that a business or person licensed in Alabama as an automotive dismantler and parts recycler may purchase vehicles at salvage disposal sales in Alabama. That statute further requires that the business or person must also obtain a separate buyer's identification card from the Department. Code of Ala. 1975, §40-12-422 allows salvage dealers licensed in other states to also buy at salvage disposal sales in Alabama , but only if they qualify for a buyer's identification card.

The Department's long-standing position is that a licensed out-of-state salvage dealer will be issued an Alabama buyer's card if the out-of-state license is equivalent to Alabama's automotive dismantler and parts recycler license. That policy was confirmed in Reg. 810-8-5-.12, which took effect on March 5, 2007.

Paragraph (5) of Reg. 810-8-5-.12 states that a license issued by another state will be deemed equivalent to an Alabama dismantler and parts recycler license if the license (1) allows the licensee to engage in the business of purchasing, dismantling, repairing, and selling salvage vehicles in the issuing state, (2) requires the licensee to post cash or a surety bond as security, (3) requires the licensee to have a physical location in the issuing state, and (4) requires the licensee to maintain adequate records.

The Department refused to renew the Petitioner's buyer's identification card in this case because the Tennessee licensing statute does not require a Tennessee automotive dismantler and parts recycler to post a cash or security bond. The Petitioner nonetheless attempted to satisfy the Department's cash or bond requirement by obtaining a \$10,000

bond from its bonding company. The Department rejected that bond as insufficient because it was not required by the Tennessee licensing statute.

As indicated, §40-12-422 specifies that salvage dealers licensed in other states may also buy vehicles at Alabama salvage sales, “provided they qualify under the provisions of this article as a holder of a buyer’s identification card.” Section 40-12-421(c) specifies that a salvage dealer qualifies for a buyer’s identification card if (1) they are licensed as an automotive dismantler and recycler, and (2) they pay a \$10 processing fee. It is undisputed that the Petitioner is a licensed salvage dealer in Tennessee, and that it paid the \$10 fee when it applied to renew its Alabama buyer’s card. The Petitioner is thus clearly entitled under Alabama law to obtain and use an Alabama buyer’s card at Alabama salvage auctions.

The Department argues that the Petitioner cannot be issued a buyer’s identification card because its Tennessee license is not equivalent to an Alabama dismantler/recyclers license. The Department does not dispute that the Tennessee license allows the Petitioner to dismantle, rebuild, and recycle salvage vehicles and parts, just as the Alabama license does concerning Alabama dismantlers and recyclers. Rather, it contends that the Tennessee license is not equivalent to the Alabama license because the Tennessee licensing statute does not require the licensee to submit cash or a security bond. See, Reg. 810-8-5-.12(5)(a)2.

The newly added requirement in Reg. 810-8-5-.12(5)(a)2. that the licensing law of the foreign state must require the submission of cash or a surety bond must be rejected because it improperly limits the scope of the statute, §40-12-422, that otherwise allows out-of-state salvage dealers to buy vehicles at Alabama salvage sales.

A Department regulation that is inconsistent with or otherwise expands or limits the statute that it seeks to apply or interpret must be rejected. “It is axiomatic that administrative rules and regulations must be consistent with the constitutional or statutory authority by which their promulgation is authorized. See. C. Sands, *Sutherland Statutory Construction* §31.02 (4th ed. 1973), ‘a regulation . . . which operates to create a rule out of harmony with the statute is a mere nullity.’” *Ex parte City of Florence*, 417 So.2d 191, 193 – 194 (Ala. 1982), quoting *Lynch v. Tilden Produce Co.*, 44 S. Ct. 488 (1924).

Section 40-12-422 allows a salvage dealer licensed in another state to buy vehicles at Alabama salvage sales. The only proviso is that the out-of-state dealer must qualify for an Alabama buyer’s card. To qualify for a buyer’s card, the dealer must be licensed as a dismantler/recycler (in Alabama or another state) and pay a \$10 fee. Section 40-12-421(c). The Petitioner in this case is licensed as a dismantler/recycler in Tennessee and paid the \$10 fee. It thus qualifies for an Alabama buyer’s card and is otherwise entitled by Alabama law to purchase vehicles at Alabama salvage sales.

Sections 40-12-421 and 422 do not require that the licensing requirements in the other state must be the same as in Alabama. The Department cannot by regulation limit a licensed out-of-state salvage dealer’s statutory right to buy salvage vehicles in Alabama by adding a stipulation or requirement not found in the statute.

In addition to being contrary to and inconsistent with the controlling Alabama statutes, the Reg. 810-8-5-.12(5)(a)2. requirement concerning the submission of cash or a bond also unreasonably discriminates against salvage dealers located in Tennessee, and also improperly inhibits interstate commerce. There is no rational basis for allowing licensed dismantlers/recyclers located in Alabama to purchase at Alabama salvage

auctions, but not also allowing similarly situated licensed dealers located in Tennessee to also participate in such sales. Section 40-12-422 mandates such equal treatment.

The Department is directed to renew or issue the Petitioner an Alabama buyer's identification card in accordance with §§40-12-421 and 422.

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

Entered March 25, 2007.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: J. Wade Hope, Esq.  
Johnny Bellis  
Joe Cowen  
Curtis Stewart