

WILBURN QUARRIES, LLC  
AND ITS MEMBERS JAMES H. PATE,  
RICHARD E. PATE, T.J. PATE, AND  
ALL OTHER MEMBERS  
224 COUNTY ROAD 15  
BREMEN, AL 35033-4925,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

§  
§  
§  
§  
§  
§  
§  
§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. MISC. 08-333

### FINAL ORDER

The Revenue Department assessed Wilburn Quarries, LLC (“Taxpayer”), and its members, James H. Pate, Richard E. Pate, and T. J. Pate, for severance tax for April 2005 through August 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 October 2, 2008. John De Buys and Matt Flannigan represented the Taxpayer. Assistant Counsel John Breckenridge represented the Department.

T. J. Pate owns the surface mineral rights on certain property in Cullman County, Alabama. Pate leased the property to a strip mining operation in the 1970’s. The strip mining operator mined the coal from the property, but left numerous large piles of overburden that it had removed to expose the coal. The overburden consists of sandstone, dirt, and other materials.

The Taxpayer is owned by the Pate family. It processed the piles of overburden on the Cullman County property during the period in issue by separating the sandstone from the other materials. It then crushed the sandstone into various grades and sold it for use primarily with gravel, asphalt, and cement.

The Taxpayer registered with the Department in early 2005 to pay the Alabama uniform severance tax levied at Code of Ala. 1975, §40-13-50, et seq. It paid the tax for January, February, and March 2005, but failed to pay for the period in issue, April 2005 through August 2007. The Department assessed the Taxpayer accordingly.

The Taxpayer argues that it erroneously registered with the Department because it incorrectly believed that it was subject to the uniform severance tax. It contends that it is not subject to the tax because it has never “engaged in mining or quarrying operations” at the Cullman County site, as required for the tax to apply.

The uniform severance tax is levied “on the purchaser of all severed materials from the ground and sold as tangible personal property.” Code of Ala. §40-13-52. “Purchaser” is defined as “[a] person acquiring severed materials from a producer. . . .” Code of Ala. 1975, §40-13-51(7). “Producer” is defined as “[a]n operator engaged in the sale of severed materials.” Code of Ala. 40-13-51(6). Finally, “operator” is defined as “[a]ny person engaged in mining or quarrying operations” in Alabama. Code of Ala. 1975, §40-13-51(4). The issue thus is whether the Taxpayer was engaged in mining or quarrying at the Cullman County site during the period in issue.

The uniform severance tax does not define “mining” or “quarrying.” The Alabama Surface Mining Act does, however, define “surface mining” as the mining of various materials “by removing the overburden lying above natural deposits thereof and mining directly from the natural deposits thereby exposed or by mining directly from deposits lying exposed in their natural state.” Code of Ala. 1975, §9-16-2(19).

The Taxpayer was not engaged in mining during the subject period because it did not remove the overburden at the location from its natural state. It only processed and sold a portion of the already mined overburden.

“Quarrying” also is not defined in the severance tax statutes or elsewhere by statute in Alabama. In such cases, a word used in a statute must be given its plain, commonly understood meaning. *Blue Cross and Blue Shield of Alabama, Inc. v. Nielsen*, 714 So.2d 293 (Ala. 1998). Also, in interpreting a statute, a court must “ascertain and effectuate the legislative intent as expressed in the statute.” *Old Republic Sur. Co. v. Auto Auction of Montgomery, Inc.*, 816 So.2d 1059, 1062 (Ala. Civ. App. 2001), quoting *Alabama Farm Bureau Mut. Cas. Ins. Co. v. City of Hartselle*, 460 So.2d 1219, 1223 (Ala. 1984).

The American Heritage College Dictionary, Fourth Ed. at 1140, defines “quarry” as “[a] open excavation or pit from which stone is quarried.” “Quarrying” is defined as “[t]o obtain (stone) from a quarry, as by cutting, digging, or blasting.” Those definitions do not conclusively answer the question because the Taxpayer is required to dig into the piles of overburden to load it onto a truck. The question still remains whether digging or removing stone that was previously removed from its natural state constitutes quarrying.

As stated, a statute should be construed to effectuate the intent of the legislature. Section 40-13-52 provides that the tax is levied “primarily to compensate the county for the use of its roads and infrastructure and also for the benefit, health, safety, and economic development of the county in which the severed material is severed. . . .” It is thus irrelevant for purposes of the tax whether the materials were removed from their

natural state by the seller, or were previously removed by another party. In either case, the severed materials are removed from a quarry and hauled over the county's roads. The legislature intended for the tax to be paid to the county to maintain those roads. The tax thus applies in this case.

Holding that the tax applies only if a seller had also removed the stone or other material from its natural state would also create a loophole in the law. For example, a quarry operator could remove stone from its natural state in the quarry. The operator could then actually sell the stone through a separate subsidiary entity. If the Taxpayer's position is correct, the uniform severance tax would not be due in the above example because the separate entity that sold the stone did not also remove the stone from its natural state. That would defeat the intent and purpose of the law.

The final assessment is affirmed. Judgment is entered against the Taxpayer for tax and interest of \$52,176.87. Additional interest is also due from the date the final assessment was entered, March 7, 2008.

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

Entered November 7, 2008.

---

BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: John J. Breckenridge, Esq.  
Matthew B. Flanigan, Esq.  
John F. De Buys, Jr., Esq.  
Janet Stathopoulos