

GEORGE W. GAYLE, JR.  
d/b/a George's Scissor Shop  
312 Kennedy Avenue  
DIVISION  
Coosada, AL 36020,

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW

§

Taxpayer,

§

DOCKET NO. MISC. 00-603

v.

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

§

### **FINAL ORDER**

The Revenue Department assessed George W. Gayle ("Taxpayer"), d/b/a George's Scissor Shop, for privilege license tax for October 1997 through September 2000. 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 January 18, 2001. The Taxpayer attended the hearing. Assistant Counsel John Breckenridge represented the Department.

### **ISSUES**

The issues in this case are:

- (1) Was the Taxpayer subject to the itinerant vendor's license levied at Code of Ala. 1975, §40-12-174(b) during the subject period; and,
- (2) Was the Taxpayer selling bowie and dirk knives during the subject period, and thus subject to the privilege license levied at Code of Ala. 1975, §40-12-143?

### **FACTS**

The Taxpayer has operated a booth at the Sandtuck Flea Market in Sandtuck, Alabama since 1992. The Sandtuck Flea Market is open one weekend a month, except during the winter months. The Taxpayer sells various knives at his booth.

When the Taxpayer first opened, he was told by the owner of the Flea Market that he would need a license from the Elmore County Probate Office. The Taxpayer went to the Probate Office, told the employees in the Office that he was going to operate a booth at the Sandtuck Flea Market, and asked which license he needed. The Probate Office issued the Taxpayer a store license. The Taxpayer renewed his store license every year through the years in issue.

The Elmore County license inspector cited the Taxpayer in June 2000 for failing to have a transient vendor's license as required by §40-12-174(b). The license inspector also cited the Taxpayer for failure to have a license to sell bowie and dirk knives pursuant to §40-12-143. The Department assessed the Taxpayer for the tax due, plus penalties and interest. The Taxpayer appealed.

### **ANALYSIS**

The Taxpayer concedes that he may have been required to have an itinerant vendor's license during the years in question. He argues, however, that he should not be penalized for failing to have the license because the Elmore County Probate Office told him he only needed a store license. I agree.

Code of Ala. 1975, §40-12-10(e) provides that if a license is not timely obtained, a 15 percent penalty shall apply to the amount due. But the Alabama Court of Civil Appeals has held that if a licensee fails to obtain a license because of misinformation provided by the issuing authority, the penalty shall not apply. *State v. Mack*, 411 So.2d 799 (Ala.Civ.App. 1982).

In this case, the Elmore County Probate Office told the Taxpayer he needed only a store license. The chief clerk in the Probate Office confirmed to the Taxpayer in mid-2000 that it was their policy to issue a store license for a booth at the Flea Market. As in *Mack*, "it would certainly be unfair to penalize

the taxpayer for the errors of the (Probate Office).” *Mack*, 411 So.2d at 804. The penalties in issue are waived for reasonable cause. Code of Ala. 1975, §40-2A-11(h).

The Elmore County license inspector testified that when she began as license inspector in early 2000, she was unsure what constituted a bowie or dirk knife for purposes of the §143 license. Consequently, she contacted the Revenue Department for guidance. A Department employee told her that the license applied to knives over six inches in length. A Department publication also stated that “fighting/assault” knives required the license.

Applying the above information, the license inspector cited the Taxpayer for the §143 license because he was selling fighting knives over six inches in length; and specifically, the Ka Bar brand Marine Corps fighting knife.

The Department concedes that the Taxpayer was not selling bowie knives. It argues, however, that the Marine Corps fighting knife is similar to a bowie knife, and should be considered in the same broad classification as a bowie knife.

The Taxpayer adamantly argues that he has never sold either bowie or dirk knives at his booth.

A tax statute must be strictly construed for the taxpayer and against the Department. *Alabama Farm Bureau Mutual Cas. Ins. Co. v. City of Hartselle*, 460 So.2d 1219 (Ala. 1984). The Elmore County license inspector did a diligent job, and reasonably relied on information from the Department in determining that the Taxpayer was subject to the §143 license. However, the Department too broadly construed the statute to include all fighting knives over six inches in length. While a Marine Corps fighting knife is similar to a bowie knife, it is not a bowie knife. There is also no evidence that the Taxpayer sells dirks, or two

edged daggers. Strictly construing the statute against the Department, the Taxpayer is not liable for the §143 license.

The final assessment is affirmed concerning the itinerant vendor's license. The penalties relating to that license are waived. The §143 license fee is dismissed. Judgment is entered against the Taxpayer for \$90 (\$30 State and Elmore County itinerant vendor license for each year), plus applicable interest and fees, less a credit for the store license paid by the Taxpayer in the subject years.

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

Entered February 16, 2001.