

R & C AUTO  
4000 EAGLE POINT CORPORATE DR.  
BIRMINGHAM, AL 35242,

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

Petitioner,

§

DOCKET NO. MISC. 10-158

v.

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

§

### FINAL ORDER

Richard Hutz, d/b/a R & C Auto (“Petitioner”), appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-8(a) concerning the Department’s revocation of his motor vehicle wholesalers license. A hearing was conducted on April 28, 2010. The Petitioner and his representative, Robyn Bennitt, attended the hearing. Assistant Counsel John Breckenridge represented the Department.

The Revenue Department issued the Petitioner a motor vehicle wholesalers license on November 30, 2009. The license showed the Petitioner’s Alabama business location to be 4000 Eagle Point Corporate Drive, Birmingham, AL 35242.

The Department subsequently investigated and determined that the Petitioner did not have a permanent business location in Alabama, as required by Code of Ala. 1975, §40-12-392. It consequently revoked the Petitioner’s wholesalers license. The Department’s Assessment Summary Sheet concerning the revocation, Dept. Ex. 1, reads in pertinent part as follows:

Based on investigative findings, it was determined that Richard Hutz of R & C Auto had a one year lease with YourOffice USA to provide office space as needed, parking space, and other services rendered. Also, the actual lease agreement between Mr. Hutz and YourOffice USA appears to be for services rendered at the dealer’s request rather than a lease for a principal place of business for a motor vehicle wholesaler. On January 22, 2009, the taxpayer was sent notification of revocation of his Act 539 Regulatory License along

with appeal rights.

The requirements for obtaining a motor vehicle wholesalers license in Alabama is set out in §40-12-392, which reads in pertinent part as follows:

(a) The application for a license shall be in such form and shall be subject to such rules and regulations as may be prescribed by the commissioner. An application shall be verified by the oath or affirmation of the applicant. If the applicant is a sole proprietorship, the application shall contain the name and residence of the applicant. If the applicant is a partnership, the application shall contain the names and residences of each partner. If the applicant is a corporation, the application shall contain the names and residences of the officers and directors. If the applicant is a new motor vehicle dealer, or used motor vehicle dealer in this state, the application shall contain the state sales tax number assigned to the applicant. The application shall enumerate the number of new and used vehicles sold during the previous calendar year; describe the exact location of the place of business, and shall state: That the location is a permanent one; that the location affords sufficient space upon and within which to adequately display one or more motor vehicles offered for sale and that an appropriate sign designates the location as being the place of business of a motor vehicle dealer; that it is a suitable place from which the applicant can in good faith carry on such business and keep and maintain books and records necessary to conduct business, which shall be available at all reasonable hours for inspection by the commissioner.

\* \* \*

(b) A motor vehicle reconditioner, motor vehicle rebuilder, or a motor vehicle wholesaler shall not be required to maintain a sign designating the location, and may maintain books, records, and files of his or her business at his or her home; provided, that books, records, and files shall be accessible and available for inspection by the commissioner, inspectors, or employees during normal business hours on usual business days. The location may be adjacent to his or her residence.

The evidence indicates that OptiMotion Business Systems, LLC, d/b/a YourOffice USA, owns a large office building at 4000 Eagle Point Corporate Drive in Birmingham, Alabama. The owner/franchisee of the above business testified at the April 28 hearing that she leased office space in the building to the Petitioner in early November 2009. The lease is for one year, from November 1, 2009 to October 31, 2010. The rent is \$99 a month. The

owner explained that the monthly rent is low because the Petitioner is beginning a new business in Alabama, and at the time the lease was signed her business desperately needed the money. She testified that she has on occasion leased comparable office space for less per month.

The building owner further testified that the Petitioner has a dedicated mail box in the building, and also an operable telephone with a dedicated telephone number. The Petitioner is also listed in the Birmingham Yellow Pages, and can maintain his business records at the location.

The Petitioner clearly qualifies to be licensed as a motor vehicle wholesaler in Alabama. The Petitioner leases a permanent business location from YourOffice USA in Birmingham. The location is a suitable place from which the Petitioner can in good faith operate as a motor vehicle wholesaler and maintain books and records at the location. All applicable requirements of §40-12-392 are satisfied.

The Petitioner does not have a business sign at the location. The building owner testified that it is her policy not to allow business or other signs on individual offices. In any case, §40-12-392(b) specifies that a motor vehicle wholesaler is not required to have a sign designating the location.

Finally, the Department argued at the April 28 hearing that the Petitioner also was required to have sufficient space to display at least one vehicle for sale. Section 40-12-392(a) does require “that the location affords sufficient space upon and within which to adequately display one or more motor vehicles offered for sale and that an appropriate sign designates the location as being the place of business of a motor vehicle dealer. . . .”

The above requirement concerning a display space clearly applies only to new and used motor vehicle dealers, not to motor vehicle wholesalers. It thus does not apply to the Petitioner.

The Department is directed to immediately reinstate the Petitioner's motor vehicle wholesalers license. Judgment is entered accordingly.

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

Entered April 30, 2010.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: John J. Breckenridge, Esq.  
Robyn Bennitt  
Janet Stathopoulos  
Randy Winkler