

STATE OF ALABAMA,

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v.

§

DEPARTMENT OF REVENUE

ALABAMA INSTITUTIONAL
FOODS, INC.,

§

ADMINISTRATIVE LAW DIVISION

1801 39th Street
Tuscaloosa, AL 35401,

§

DOCKET NO. MISC.85-126

§

Taxpayer.

ORDER

This matter involves a preliminary assessment of license tax entered by the Revenue Department against the Taxpayer concerning the period October 1, 1982 through September 30, 1984. A hearing was conducted by the Administrative Law Division on August 7, 1985.

The Taxpayer was represented at said hearing by its executive vice president, Mr. Don Milligan. The Revenue Department was represented by assistant counsel John J. Breckenridge. Based on the evidence submitted by the parties, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The Taxpayer is located in Tuscaloosa, Alabama and is in the business of storing, selling and distributing food items. For the period in issue, the Taxpayer was under contract with the State of Alabama to store certain government commodities. The Taxpayer also distributed a portion of said commodities as directed by the government.

Upon investigation by the Revenue Department, the Taxpayer was cited for failure to pay the license taxes required by Code of Ala. 1975, §40-12-179. Based thereon, the Department entered the

preliminary assessment in issue. In addition to the tax levied under §179, the preliminary assessment also includes a corresponding county license tax, which, under §40-12-2(e), is levied in the amount of 50 percent of the State tax.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-12-179, levies two separate annual license taxes as follows:

Each person operating a warehouse or yard for the storage of goods, wares or merchandise for hire shall pay an annual license tax to the state of \$25.00; where such warehouseman also acts as a distributing agent and forwards and distributes the goods stored in such warehouse and charges for such service, he shall pay an additional license tax of \$100.00.

The facts in the present case are clear that the Taxpayer did, during the assessment period, operate its warehouse for hire for the purpose of storing government commodities. Further, it is undisputed that the Taxpayer also distributed a portion of said goods as directed by the State. Accordingly, it must be found that the Taxpayer is liable under the provisions of §179 for the license tax in issue.

The Taxpayer argues that the State did not inform it of the additional licensing provisions during the bid solicitation process. However, the State was under no duty to so inform the Taxpayer. Further, it is well-settled that a person has the responsibility of knowing the duties and liabilities imposed by the law, and that ignorance of said laws cannot work to relieve the

person from his liabilities.

The Taxpayer also argues that it shouldn't have to pay the taxes because the economic burden for said taxes would be passed to the State through an increase in the bid price. The Taxpayer's argument has been rejected by the courts in State v. King and Boozer, 314 U.S. 1 and Hamm v. Boeing Co., 216 So.2d 288. Those cases hold in substance that the incidence of the tax is controlling, and that the shifting of the economic burden of the tax to an exempt entity is of no consequence. Thus, although the economic burden may be ultimately passed to the State, the liability and responsibility for the taxes are on the Taxpayer.

Based on the above the assessment in issue is correct and due to be upheld. The Revenue Department is hereby directed to make said assessment final.

Done this the 27th day of August, 1985.

BILL THOMPSON
Chief Administrative Law Judge