STATE OF ALABAMA DEPARTMENT OF REVENUE,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
v.	§	DOCKET NO. L. 85-167
A-1 BONDING COMPANY OF MONTGOMERY, INC. 810 East Jefferson Street Montgomery, AL 36104, Taxpayer.	§ § §	

ORDER

This case involves a disputed preliminary assessment of license tax for bondsmen (Code of Alabama 1975, §40-12-64) issued against A-1 Bonding Company of Montgomery, Inc., a corporation (Taxpayer), for the period October 1, 1982 through September 30, 1985. A hearing was held in the matter on June 16, 1986. The parties were represented at the hearing by the Honorable Frank L. Thiemonge, for the Taxpayer, and the Honorable Mark D. Griffin, for the Revenue Department. A post-hearing brief was filed on behalf of the Taxpayer by the Honorable Alvin Prestwood. Based on the evidence submitted at the hearing, and in consideration of the arguments and authorities presented by the parties, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The relevant facts are undisputed. The Taxpayer is in the bail bonding business and has an office located in Montgomery County. It has no offices, does no advertising and has no personnel located in Elmore County. During the period in question,

the Taxpayer was properly bonded as required under the provisions of Code of Alabama 1975, §15-13-22. That section requires every bondsman to have a $25,000.00 ($10,000.00 in Montgomery and Cullman Counties) bond in every county in which it does business. The Taxpayer was also properly licensed in Montgomery County as required under the section in dispute, Code of Alabama 1975, §40-12-64. The only issue presented for review is whether the Taxpayer was "in the business of making bonds and charging for same" in Elmore county so as to be liable for the §40-12-64 license tax in that county.

The testimony in the case indicates that on several occasions during the audit period, the Taxpayer executed a bail bond for the purpose of gaining the release of a person incarcerated in an Elmore County jail. In those instances, the individual seeking the bond made application and paid for the bond at the Taxpayer's office in Montgomery County. Surety for the bond was then certified by the Montgomery County Sheriff, after which the bond was delivered by an agent of the Taxpayer to the appropriate officer at the Elmore County jail. Upon acceptance of the bond by the Elmore County official, the prisoner was released into the Taxpayer's custody and escorted to the Taxpayer's office in Montgomery, where he was photographed and further paperwork was completed.

CONCLUSIONS OF LAW

As stated, the issue is whether the Taxpayer was "engaged in the business of making bonds and charging for the same" in Elmore County during the assessment period within the purview of §40-12-64. That section reads as follows:

> Each person engaged in the business of making bonds and charging for the same, except guaranty companies or corporations otherwise specifically licensed, shall pay a license tax of $100.00 per annum. The payment of the license tax required by this section. shall authorize the doing of business only in the town, city or county where paid. No person engaged in the business of making bonds and charging for the same shall be exempt from paying said license tax.

Section 15-13-22 provides that every bond bailsman must have a bond with corporate surety in the amount of $25,000.00 ($10,000.00 in Cullman and Montgomery counties) in each county in which it does business. Subsections (c) and (d) of §15-13-22 read as follows:

> (c) Every person engaged in the business of making bail bonds and charging therefor, except corporations qualified to do a bonding business in this state, shall be required, in addition to all other requirements of this section, to furnish a bond with corporate surety in the amount of $25,000 ($10,000 in Cullman County) to be approved by the probate judge of each county in which such person engages in such business, conditioned to guarantee the payment of all sums of money that may become due the state or any political subdivision thereof by virtue of any judgment absolute being rendered against such person on a forfeiture of bail.
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> (b)Only one such bond set forth in subsection (c) of this section shall be required in each county where such person does business, and the liability of the surety company executing a bond under this section shall not exceed the face amount of such surety bond; provided, however, that the bond may be cancelled as to any future liability at any time by the surety giving thirty days

> written notice of such cancellation to the probate judge of the county in which the bond is filed.

The parties are in agreement that the language, and therefore the intent, of §40-12-64 is unclear. Evidence of that fact is that a large portion of the administrative hearing was taken up by the parties presenting conjecture as to the meaning of the statute, not only as to what constitutes "doing business" within the framework of the statute, but also as to the meaning of the phrase "otherwise specifically licensed" as it relates to guaranty companies and corporations. In such cases of doubtful legislative intent, the statute must be construed in favor of the taxpayer and against the taxing authority. State v. Green, 371 So.2d 929; Williams v. City of Dadeville, 46 So.2d 427; State v. Dr. Pepper Bottling Company, 155 So. 94. In addition, licensing statutes in general must be strictly construed against the Department, and their scope should not be enlarged by implication. State v. Green, supra, State v. Deep Sea Foods, Inc., 477 So.2d 419; Misener Marine Construction., Inc. v. Eagerton, 423 So.2d 161.

The Taxpayer's principle argument is that the tax is due on "the business of making bonds and charging for the same", and that the Taxpayer is not liable for said tax in Elmore County because it issues bonds and receives payment for them only in Montgomery County. While that argument is not absolutely convincing, especially in light of the fact that the bonds are used for the release of persons incarcerated in Elmore County, because of the

unsure intent of the statute, and in light of the above rules of construction, it must be found under the particular facts of the case that the Taxpayer is not in the business of 'making bonds and charging for the same" in Elmore County, and is therefore not subject to the §40-12-64 licensing provision in that county. It would be harsh and impractical, and probably not the intention of the legislature, to require a bail bonding company to be licensed under §40-12-64 and also have a surety bond under §15-13-22 in every county in which one of its bonds is presented as bail, even though the business has no offices in the county and does not regularly operate in said county.

Further, it is doubtful that the mere delivery of a certified bail bond by the Taxpayer into Elmore County, without other activity or presence within the county, would create a sufficient minimum contact between the Taxpayer and said county so as to allow the county to levy a tax against the Taxpayer. Such lack of nexus would violate the due process clauses of both the United States and Alabama Constitutions. The commerce clause would not be violated because it relates only to interstate transactions. For cases on nexus, see generally National Bellas Hess, Inc. v. Illinois Revenue Department, 87 S.Ct. 89; Scripto, Inc. v. Carson, 80 S. Ct. 619; Miller Brothers Company v. State of Maryland, 74 S.Ct. 535; and Felt & Tarrent Company v. Gallagher, 59 S.Ct. 376. Further, the Alabama Supreme Court, in State v. West Point Wholesale Grocery

Company, 223 So.2d 269, has set out that the solicitation of orders and the subsequent delivery of the product into a jurisdiction, without other activity, does not create a sufficient connection so as to allow taxation.

Based on the above, the Revenue Department is hereby directed to reduce and make final the assessment in issue showing no tax due.

Done this 28th day of August, 1986.

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BILL THOMPSON
Chief Administrative Law Judge