

STATE OF ALABAMA  
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

§

v.

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DOCKET NO. C. 86-226

C & P CONSTRUCTION CO., INC.  
P.O Box 609  
Geneva, AL 36340,

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Taxpayer.

§

ORDER

This matter involves a preliminary assessment of contractors gross receipts tax entered by the Revenue Department (Department) against C & P Construction Company (Taxpayer) for the period December 1, 1985 through January 31, 1986. A hearing was conducted by the Department's Administrative Law Division on February 12, 1987. Mr. William D. Sanford, Sr. was present and represented the Taxpayer. Assistant counsel Ron Bowden appeared on behalf of the Department. 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

On October 16, 1981, the Alabama Highway Department let a contract to widen approximately two miles of road located in Daleville, Alabama. On November 2, 1981, the Taxpayer, as low bidder, was awarded the contract. Work began on November 20, 1981, with the projected completion date set for October 1, 1982. However, due to unforeseen delays caused by the failure of Alabama Power Company to remove and relocate various utility poles and the

delay of the City of Daleville in letting a contract to relocate its water distribution system, the Taxpayer could not finish the project until February 3, 1983.

Due to the aforementioned unforeseen delays, the Taxpayer incurred extended overhead costs, for which it sought relief with the Highway Department. The Highway Department initially denied the Taxpayer's claim in full. Thereafter, the claim was submitted to an Advisory Committee which offered the Taxpayer a full settlement of \$23,942.17. The Taxpayer rejected the Advisory Board's offer and filed a "Request for Equitable Adjustment" asking for approximately \$285,000.00. The Highway Department by letter dated September 17, 1984 denied the Taxpayer's claim and re-offered the Advisory Board's figure of \$23,941.17. However, at a final meeting between the Taxpayer and the Highway Department, the Taxpayer's attorney presented a damage estimate of \$105,654.00 computed using the "Eichleay" formula. The Highway Department agreed to that amount and on December 20, 1985 the parties entered into a "Settlement Agreement" in settlement of all claims.

#### CONCLUSIONS OF LAW

Code of Ala. 1975, §40-23-50(a) in part levies a contractors gross receipts tax as follows:

Upon every person, firm or corporation engaged or continuing within this state in the business of contracting to construct, reconstruct or build any public highway, road, bridge or street, an amount equal to five percent of the gross receipts derived from performance of such contracts. The term "gross receipts" is herein

defined to include only those amounts derived and received by the contractor from the performance of such contracts.

There is no question that the \$105,654.00 in question was paid to the Taxpayer as a direct result of its work on the Daleville project. The Taxpayer's argument is that the extra amount was paid as reimbursement for "damages", i.e., additional overhead costs incurred due to the unforeseen delays. However, characterization of the amounts as a damage payment does not remove said payment from the scope of the gross receipts tax. As stated, the tax is on the "gross receipts derived from performance of such (highway) contracts." The \$105,654.00 was paid as a direct result of additional expenses incurred by the Taxpayer in the performance of the Daleville contract. Thus, the tax is due thereon, just as if the extra payment had been a part of the original contract.

The above considered, it is hereby determined that the preliminary assessment as entered by the Department is correct and should be made final, with applicable interest as required by statute.

Done this 30th day of March, 1987.

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BILL THOMPSON  
Chief Administrative Law Judge