

ROGER COBIA d/b/a The Wood Works §
3328 Cross Creek Drive
Montgomery, Alabama 36116, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer, §

DOCKET NO. MISC. 95-124

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed privilege license tax against Roger Cobia ("Taxpayer"), d/b/a The Wood Works, for the period October 1991 through September 1994. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on April 3, 1995. The Taxpayer appeared at the hearing. Assistant counsel Wade Hope represented the Department.

The issue in this case is whether the \$90 penalty included in the final assessment in issue should be waived.

The Department audited the Taxpayer and determined that the Taxpayer was subject to the contractor's privilege license levied at Code of Ala. 1975, §40-12-84. The Taxpayer paid the license tax due plus interest, but argues that the \$90 penalty assessed by the Department should be waived.

The Taxpayer claims that when he obtained his business license from the City of Montgomery, a clerk told him that he would not need any other licenses. The Taxpayer assumed that the clerk meant both city and State licenses. However, the Taxpayer also concedes that he was aware of the §84 contractor's license, but erroneously thought that it applied only if he had more than \$300,000 in annual

contracts.

Code of Ala. 1975, §40-12-10(e) provides that a taxpayer that fails to timely obtain a privilege license "shall be subject to a penalty of 15%". Subparagraph (f) provides that "it shall be unlawful . . . to fail to collect such penalties when issuing such license".

I recognize that the Taxpayer failed to obtain a contractor's license based on a good faith misunderstanding of the law. However, the mandatory language of §40-12-10(e) requires that the 15% penalty must be assessed. The only time that the penalty can be waived is if the Department materially contributes to or causes a taxpayer to fail to comply with the statute. State v. Mack, 411 So.2d 799 (Ala.Civ.App. 1982). That did not happen in this case.

Consequently, the \$90 penalty must be affirmed. Judgment is accordingly entered against the Taxpayer in the above amount.

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

Entered April 7, 1995.

BILL THOMPSON
Chief Administrative Law Judge