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TONSMEIRE & HODNETTE  
ATTORNEYS AND COUNSELLORS AT LAW  
ANNEX FIRST NATIONAL BANK BUILDING  
MOBILE, ALABAMA

GEORGE A. TONSMEIRE  
ROBERT E. HODNETTE, JR.

Wednesday

Mrs Duck -

I forgot to send you the  
bond for costs in the Mobile  
Beverage Co Inc. tax  
appeal. It is enclosed

Robert Hodnette



TONSMEIRE & HODNETTE  
ATTORNEYS AND COUNSELLORS AT LAW  
ANNEX FIRST NATIONAL BANK BUILDING  
MOBILE, ALABAMA

April 27, 1955

GEORGE A. TONSMEIRE  
ROBERT E. HODNETTE, JR.  
—  
STOVA F. MCFADDEN

Mrs. Alice Duck  
Register in Circuit Court  
Baldwin County  
Bay Minette, Alabama

In Re: Mobile Beverage Co. -  
Use Tax Appeal

Dear Mrs. Duck:

Enclosed is the bill of complaint in the above appeal  
which we should have filed at the time of the filing of the  
notice of appeal.

Yours very truly,

TONSMEIRE & HODNETTE



Stova F. McFadden

SFM:se  
Enclosure

TONSMEIRE & HODNETTE  
ATTORNEYS AND COUNSELLORS AT LAW  
ANNEX FIRST NATIONAL BANK BUILDING  
MOBILE, ALABAMA

October 27, 1954

GEORGE A. TONSMEIRE  
ROBERT E. HODNETTE, JR.

Mrs. Alice Duck  
Register of the Circuit Court  
Baldwin County  
Bay Minette, Alabama

In re: Mobile Beverage Company vs State  
Department of Revenue

Dear Mrs. Duck:

Enclosed is notice of appeal in the indicated case.

Very truly yours,

TONSMEIRE & HODNETTE

  
Robert E. Hodnette, Jr.

vg

MOBILE BEVERAGE COMPANY, ) IN THE CIRCUIT COURT  
 INC., a corporation )  
                                   ) OF BALDWIN COUNTY,  
                                   ) Appellant )  
                                   ) ALABAMA )  
 VS )  
                                   ) IN EQUITY )  
 THE STATE DEPARTMENT OF )  
 REVENUE, STATE OF ALABAMA ) NO.  
                                   ) Appellee )

NOTICE OF APPEAL FROM FINAL ASSESSMENT ON USE TAX:  
 TO THE REGISTER OF THE CIRCUIT COURT OF BALDWIN COUNTY,  
                                   ALABAMA

Take notice that the undersigned, Mobile Beverage Company, Inc. a corporation organized and existing under the laws of the State of Alabama, herein called the appellant, hereby files notice of appeal to the Circuit Court of Baldwin County, Alabama, In Equity, from the action of the State Department of Revenue making final the assessment dated and entered on the minutes of the State Revenue Department on September 29, 1954, wherein said State Department of Revenue determined that appellant was liable for use tax under Title 51, Section 787 et seq., Code of Alabama of 1940 in the amount of Three Hundred Nine and 33/100 Dollars (\$309.33) plus penalties and interest in the amounts of Thirty and 94/100 Dollars (\$30.94) and Twenty-Nine and 88/100 Dollars (\$29.88), respectively, or a total of Three Hundred Seventy and 16/100 Dollars (\$370.16) for the period of January 1, 1951, through March 31, 1954.

This appeal is taken under Section 140, Title 51, Code of Alabama of 1940; and in addition to the filing of this notice of appeal the appellant has given bond contemporaneously herewith to pay all costs in this cause incurred; appellant also files notice with the Secretary of the Department of Revenue of this appeal and has contemporaneously therewith paid the said assessment of Three Hundred Seventy and 16/100 Dollars (\$370.16) plus the sum of One and 86/100 Dollars (\$1.86) interest from the date of said final assessment.

MOBILE BEVERAGE COMPANY, INC.

By A. M. Alley Jr  
Secretary-Treasurer

Tonsmeire & Hodnette  
Attorneys for Appellant  
407 First National Bank Annex

By Robert E. Hodnette  
Of Counsel

MOBILE BEVERAGE COMPANY, INC., a corporation	)	IN THE CIRCUIT COURT
	)	OF BALDWIN COUNTY,
Appellant	)	ALABAMA
VS	)	IN EQUITY
THE STATE DEPARTMENT OF REVENUE, STATE OF ALABAMA	)	NO.
Appellee	)	

BOND FOR COSTS

STATE OF ALABAMA )  
COUNTY OF BALDWIN )

We, the undersigned, hereby acknowledge ourselves as surety for costs to the Circuit Court of Baldwin, In Equity, by Mobile Beverage Company, Inc., a corporation, from that said assessment for use taxes made final against it by the Department of Revenue, State of Alabama, on the 29th day of September, 1954.

Wherein and whereby the Department of Revenue of the State of Alabama did adjudge and determine that for the period of from January 1, 1951, to March 31, 1954, there should be assessed against Mobile Beverage Company, Inc., for use tax for said period the sum of Three Hundred Nine and 33/100 Dollars (\$309.33) and the further sum of Sixty and 83/100 Dollars (\$60.83) as penalty and interest thereon.

In the event Mobile Beverage Company, Inc., shall prosecute this appeal to effect and to pay all costs adjudged against it then this obligation shall be null and void; otherwise, in full force.

Sealed with our seal and dated this 27<sup>th</sup> day of October, 1954.

MOBILE BEVERAGE COMPANY, INC.

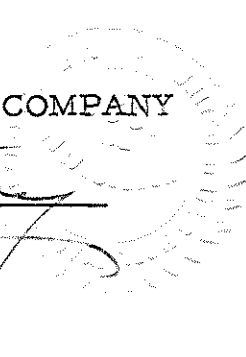
By A. M. Alley Jr.  
Its Secy - Treasr

Principal

U. S. FIDELITY & GUARANTY COMPANY

By F. L. Starnes  
It

Surety



GENERAL POWER OF ATTORNEY

No. 63563

Know all Men by these Presents:

That the UNITED STATES FIDELITY AND GUARANTY COMPANY, a corporation organized and existing under the laws of the State of Maryland, and having its principal office at the City of Baltimore, in the State of Maryland, does hereby constitute and appoint

K. C. Ptomey

of the City of Mobile, State of Alabama, its true and lawful attorney in and for the State of

for the following purposes, to wit:

To sign its name as surety to, and to execute, seal and acknowledge any and all bonds, and to respectively do and perform any and all acts and things set forth in the resolution of the Board of Directors of the said UNITED STATES FIDELITY AND GUARANTY COMPANY, a certified copy of which is hereto annexed and made a part of this Power of Attorney; and the said UNITED STATES FIDELITY AND GUARANTY COMPANY, through us, its Board of Directors, hereby ratifies and confirms all and whatsoever the said

K. C. Ptomey

may lawfully do in the premises by virtue of these presents.

In Witness Whereof, the said UNITED STATES FIDELITY AND GUARANTY COMPANY has caused this instrument to be sealed with its corporate seal, duly attested by the signatures of its Vice-President and Assistant Secretary, this 15th day of June, A. D. 1949.

UNITED STATES FIDELITY AND GUARANTY COMPANY.

(Signed) E. W. Levering, Jr. Vice-President.

(Signed) Glover C. Trenholm Assistant Secretary.

STATE OF MARYLAND BALTIMORE CITY.

On this 15th day of June, A. D. 1949 before me personally came E. W. Levering, Jr., Vice-President of the UNITED STATES FIDELITY AND GUARANTY COMPANY and Glover C. Trenholm, Assistant Secretary of said Company, with both of whom I am personally acquainted, who being by me severally duly sworn, said that they resided in the City of Baltimore, Maryland; that they, the said E. W. Levering, Jr. and Glover C. Trenholm were respectively the Vice-President and the Assistant Secretary of the said UNITED STATES FIDELITY AND GUARANTY COMPANY, the corporation described in and which executed the foregoing Power of Attorney; that they each knew the seal of said corporation; that the seal affixed to said Power of Attorney was such corporate seal, that it was so affixed by order of the Board of Directors of said corporation, and that they signed their names thereto by like order as Vice-President and Assistant Secretary, respectively, of the Company.

My commission expires the first Monday in May, A. D. 1951

(Seal) (Signed) Frieda Walter Notary Public.

STATE OF MARYLAND BALTIMORE CITY.

I, M. Luther Pittman, Clerk of the Superior Court of Baltimore City, which Court is a Court of Record, and has a seal, do hereby certify that Frieda Walter, Esquire, before whom the annexed affidavits were made, and who has thereto subscribed his name, was at the time of so doing a Notary Public of the State of Maryland, in and for the City of Baltimore, duly commissioned and sworn and authorized by law to administer oaths and take acknowledgments, or proof of deeds to be recorded therein. I further certify that I am acquainted with the handwriting of the said Notary, and verily believe the signature to be his genuine signature.

In Testimony Whereof, I hereto set my hand and affix the seal of the Superior Court of Baltimore City, the same being a Court of Record, this 15th day of June, A. D. 1949.

(SEAL) (Signed) M. Luther Pittman Clerk of the Superior Court of Baltimore City.



COPY OF RESOLUTION

That Whereas, it is necessary for the effectual transaction of business that this Company appoint agents and attorneys with power and authority to act for it and in its name in States other than Maryland, and in the Territories of the United States and in the Provinces of the Dominion of Canada and in the Colony of Newfoundland.

Therefore, be it Resolved, that this Company do, and it hereby does, authorize and empower its President or either of its Vice-Presidents in conjunction with its Secretary or one of its Assistant Secretaries, under its corporate seal, to appoint any person or persons as attorney or attorneys-in-fact, or agent or agents of said Company, in its name and as its act, to execute and deliver any and all contracts guaranteeing the fidelity of persons holding positions of public or private trust, guaranteeing the performances of contracts other than insurance policies and executing or guaranteeing bonds and undertakings, required or permitted in all actions or proceedings, or by law allowed, and

Also in its name and as its attorney or attorneys-in-fact, or agent or agents to execute and guarantee the conditions of any and all bonds, recognizances, obligations, stipulations, undertakings or anything in the nature of either of the same, which are or may by law, municipal or otherwise, or by any Statute of the United States or of any State or Territory of the United States or of the Provinces of the Dominion of Canada or of the Colony of Newfoundland, or by the rules, regulations, orders, customs, practice or discretion of any board, body, organization, office or officer, local, municipal or otherwise, be allowed, required or permitted to be executed, made, taken, given, tendered, accepted, filed or recorded for the security or protection of, by or for any person or persons, corporation, body, office, interest, municipality or other association or organization whatsoever, in any and all capacities whatsoever, conditioned for the doing or not doing of anything or any conditions which may be provided for in any such bond, recognizance, obligation, stipulation, or undertaking, or anything in the nature of either of the same.

I, G. P. Moore, an Assistant Secretary of the UNITED STATES FIDELITY AND GUARANTY COMPANY, do hereby certify that the foregoing is a full, true and correct copy of the original power of attorney given by said Company to

K. C. Ptomey

of Mobile, Alabama, authorizing and empowering him to sign bonds as therein set forth, which power of attorney has never been revoked and is still in full force and effect.

And I do further certify that said Power of Attorney was given in pursuance of a resolution adopted at a regular meeting of the Board of Directors of said Company, duly called and held at the office of the Company in the City of Baltimore, on the 11th day of July, 1910, at which meeting a quorum of the Board of Directors was present, and that the foregoing is a true and correct copy of said resolution, and the whole thereof as recorded in the minutes of said meeting.

In Testimony Whereof, I have hereunto set my hand and the seal of the UNITED STATES FIDELITY AND GUARANTY COMPANY on

(Date) 10-27-54

*G. P. Moore*

Assistant Secretary

GENERAL BOARD OF MANAGERS

1000000000

MOBILE BEVERAGE COMPANY, )	IN THE CIRCUIT COURT
INC. a corporation )	
Appellant )	OF BALDWIN COUNTY,
VS )	ALABAMA
THE STATE DEPARTMENT OF )	IN EQUITY
REVENUE, STATE OF ALABAMA )	NO.
Appellee )	

AGREED STATEMENT OF FACTS

That the Mobile Beverage Company, Inc. hereinafter referred to as the distributor, is and was an Alabama corporation having its principal place of business at Loxley, in Baldwin County, Alabama. That it is and was a distributor for the Falstaff Brewing Corporation, engaged in the business of selling beer at wholesale to retail dealers in bottles and cans, by the carton or case, each carton containing six (6) cans or bottles and each case containing twenty-four (24) cans or bottles.

That the cartons and cases of canned beer as they were received by the distributor from the brewer and as they were sold by the distributor to the retailers did not contain can openers. That it being the trade practice for dealers in canned beer to furnish can openers to their customers such openers were purchased by the distributor from its out-of-state brewer. That such can openers were furnished by the distributor to the retail dealers purchasing the beer, which openers were in turn furnished by the retailers to their customers. That these can openers were furnished by the distributor to the retail dealers without special or separate charge. That there was no fixed relation between the number of can openers furnished and the number of cartons or cases of beer sold by the distributor to the retailer. That there was no fixed relation between the number of can openers furnished and the number of cans, cartons or cases of beer sold by the retailers to their customers. That it was the custom and practice for beer dealers to furnish can openers to their customers only on request or at such times as they may have had reason to believe that their customer did not already have an opener available. That the can openers were of sturdy construction capable of use in opening many cartons or cases of beer.

That there was no record made by the distributor of the number of openers furnished to any particular retail dealer. That the charge made by the distributor for the cartons and cases of beer was the same regardless of the number of openers furnished. That the retail dealers kept no record of the number of openers received and kept no record or account of the number of openers furnished to any particular customer. That the charge for beer made by the retailer to his customers was the same regardless of whether or not an opener or openers were furnished with the beer.

During the period beginning January 1, 1951 and ending March 31, 1954 said distributor purchased from its out-of-state brewer a large number of can openers under the arrangement mentioned above. There after, on the 14th day of June, 1954, under the authority of the Alabama Use Tax Act, (Article 11, Chapter XX, Title 51, Code of Alabama, 1940), an assessment was made by the Department of Revenue, of the State of Alabama, against the distributor for Use Tax, penalty and interest thereon, on said purchases for said period in the amount of Three Hundred Seventy and No/100 Dollars (\$370.00). Subsequent to such assessment, on the 29th day of September, 1954, said assessment was changed, corrected and made final in the amount of Three Hundred Seventy and 16/100 Dollars (\$370.16). The distributor paid said assessment of Three Hundred Seventy and 16/100 Dollars (\$370.16) plus the sum of One and 86/100 Dollars (\$1.86) interest from the date same was made final, under protest, on the 27th day of October, 1954. Contemporaneously, the distributor filed notice of appeal to the Circuit Court of Baldwin County, Alabama, together with bonds for costs as required by Section 140, Title 51, Code of Alabama, 1940.

TONSMETRE & HODNETTE  
By [Signature]  
Attorneys for Appellant

STATE OF ALABAMA  
By John Patterson  
John Patterson, Attorney  
General of Alabama

[Signature]  
Willard W. Livingston, Counsel  
Department of Revenue & Assistant  
Attorney General of Alabama  
Counsel for Appellee

MOBILE BEVERAGE COMPANY, INC.,  
a Corporation,

Appellant

vs

THE STATE DEPARTMENT OF REVENUE,  
STATE OF ALABAMA,

Appellee

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA,  
IN EQUITY  
NO. \_\_\_\_\_

MEMORANDUM BRIEF

STATEMENT OF THE CASE

This is an appeal by the appellant, Mobile Beverage Company, from a final assessment of use tax made against the appellant by the State Department of Revenue on September 29, 1954. Said final assessment covered the period January 1, 1951 thru March 31, 1954, the total amount of said final assessment being \$370.16. On October 28, 1954 the appellant paid the amount of said final assessment, plus accrued interest, to the department of revenue for the purpose of perfecting its appeal in accordance with the provisions of Title 51, section 140, Code of Alabama 1940.

FACTS

The facts in this case are presented in an Agreed Statement of Facts filed with the Court on or about January 17, 1956. In substance, the facts are that the appellant, Mobile Beverage Company, a distributor of beer, purchased beer can openers from without the State of Alabama and furnished such openers to its customers who sold beer at retail and who in turn furnished such openers to its purchasers of beer. No charge was made by the appellant for the openers and no sale of the openers was made by the appellant in any respect or to any one.

ARGUMENT

The pertinent statute involved is Title 51, section 788, as amended, Code of Alabama 1940, which provides, in part, as follows:

"(a) An excise tax is hereby imposed on the storage, use, or other consumption in this state of tangible personal property purchased at retail on or after the first of March, 1939, for storage, use or other consumption in this state at the rate of three percent of the sales price of such property, regardless of whether the retailer is or is not engaged in the business in this state, except as provided in subsection (b) of this section."

(The use tax is imposed only on the purchases of tangible personal property from without the State of Alabama in view of the exemption provision found in Title 51, section 789(a), as amended, Code of Alabama 1940, which provides that property, the sale of which is subject to the sales tax, is exempt from the use tax.)

It is the State's position that the appellant purchased the openers at retail from without the State of Alabama for storage, use or consumption in this State and that the appellant uses and consumes such openers in its business by furnishing them to its retail customers purchasing beer. It is clear that the openers are not sold by the appellant or by appellant's customers. Such use by appellant of the openers as stated in the Agreed Statement of Facts, therefore, subjects the appellant to the use tax levied by section 788, supra.

The principle of law controlling the question involved is found in the cases of City Paper Company, et al v. Long, et al, 235 Ala. 652, 180 So. 324, and Durr Drug Company v. Long, et al, 237 Ala. 689, 188 So. 873.

In the City Paper Company case, supra, the question related to the liability of a wholesaler for sales tax on the sales of wrappings and cartons to retailers who used them as wrappings and containers of merchandise sold by them. In holding that such sales were subject to the sales tax, the Court stated as follows:

"It is not controverted, but admitted by the averments of the bill, that the goods which complainants sell to their customers, the retailer, jobber, etc., are used in the retail business as wrappings and cartons of the merchandise sold by them. . . . These are used, and, for all practical purposes, consumed by the retailer and jobber as an incident to their business, and the cost to them is figured in as a part of the overhead expense of the business."

From the holding in this case, it is apparent that if such wrappings and cartons are purchased by a retailer from without the State of Alabama, then such retailer would be liable to the State of Alabama for the use tax levied by section 788, supra, in view of the fact that the retailer would be using and consuming such wrappings and cartons as an incident to their business.

In the Durr Drug Company case, supra, the question presented was the liability of a wholesaler for sales tax on the sale of cardboard powder boxes, pill boxes, bottles, jars and similar containers sold by such wholesaler to

to retail druggists, and used by them as containers in the sale and delivery of drugs and medicines to their customers. In holding that such sales were subject to the sales tax, the Court held that the druggists were not selling such cartons, boxes and bottles but were in fact using such containers in its business. The Court stated *further*:

"The use of the bottles by the wholesaler (~~wholesaler~~) in the manner, indicated by the stipulation of facts, makes it a consumer."

Such is the situation in the case at bar. Appellant, in furnishing the openers as stated in the Agreed Statement of Facts, thereby uses such openers as an incident to its business and, as such, is the consumer of the openers. Such being the case, the openers were purchased at retail by the appellant and used and consumed by the appellant within the meaning of the provisions of section 788, *supra*.

Appellee respectfully insists that the final assessment in this cause is proper and correct and that same should be confirmed by the Court in this appeal.

Respectfully submitted,

*John Patterson*  
JOHN PATTERSON, Attorney General

*Willard W. Livingston*  
WILLARD W. LIVINGSTON, Counsel, Dept. of Revenue, and Asst. Attorney General of Alabama

Counsel for Appellee

\*\*\*\*\*

STATE OF ALABAMA    ◊  
MONTGOMERY COUNTY   ◊

I hereby certify that I have this day served a copy of the above and foregoing memorandum brief on Tonsmeire & Hodnette, Annex First National Bank Building, Mobile, Alabama, attorneys of record for the appellant, by placing same in the United States mail, properly addressed and with postage prepaid.

DONE this the 2 day of May, 1956.

*Willard W. Livingston*  
Of Counsel for Appellee

SUMMONS

Form 1531-3

McQuiddy Printing Co., Nashville, Tenn.

The State of Alabama, \_\_\_\_\_ County

IN CIRCUIT COURT, IN EQUITY

To any Sheriff of the State of Alabama—Greeting:

You are hereby commanded to summon The State Department of Revenue

to appear and answer, plead, or demur, within thirty days from the service hereof, to a Bill of Complaint filed in said Circuit Court, in equity, for said County of said State by Mobile Beverage Company

against The State Department of Revenue

Herein fail not. Due return make of this writ as the law directs.

Witness this 28th day of April, 19 55.

Marie J. Smith, Register.

(Defendant is entitled to a copy of the bill on application to the Register.)

The State of Alabama

..... COUNTY.

IN CIRCUIT COURT, IN EQUITY

vs.

SUMMONS

Returned by the Sheriff and filed in office, this the ..... day of ....., 19....., Register.

Received in office, this the ..... day of ....., 19....., Sheriff.

I have executed the within by leaving a copy thereof with.....

defendant named herein, on this the ..... day of ....., 19....., Sheriff.

By....., Deputy.



MOBILE BEVERAGE COMPANY,	)	IN THE CIRCUIT COURT
INC. a corporation,	)	
	)	OF BALDWIN COUNTY,
Appellant	)	
vs.	)	ALABAMA
THE STATE DEPARTMENT OF	)	
REVENUE, STATE OF ALABAMA,	)	IN EQUITY
	)	
Appellee	)	NO.

TO THE HONORABLE JUDGES OF SAID COURT:

Comes now your petitioner, the Mobile Beverage Company, Inc., a corporation, and shows unto the Court as follows:

ONE

That your petitioner is an Alabama Corporation having its principal place of business at Loxley, in Baldwin County, Alabama.

TWO

That your petitioner is a beer distributor for the Falstaff Brewing Corporation, engaged in the business of selling beer at wholesale to retail dealers in bottles and cans, by the carton or case, each carton containing six (6) cans or bottles and each case containing twenty-four (24) cans or bottles.

THREE

Your petitioner further shows unto your Honors that as a necessary part of each sale of canned beer, in order that access may be had to the contents of the cans, your petitioner furnishes can-openers, which are purchased by it from the brewer of the beer outside the State of Alabama; That in return for petitioner purchasing the can openers from the brewer, beer is sold to petitioner by the brewer at a price cheaper than that which would have been charged had not the petitioner made the additional purchase of the can openers. Petitioner alleges that such arrangement with the brewer allows petitioner a greater

profit on the resale of said beer and actually passes the cost of the can openers on to the ultimate consumer as a part of the retail sales price of the beer. Petitioner therefore alleges that it is not storing, using or consuming tangible personal property purchased at retail within the meaning of Section 787 et seq., Title 51 of the Alabama Code, but that in fact petitioner is acting as a wholesaler within the meaning of said sections for the reason that the can openers are purchased and sold for resale.

#### FOUR

Your petitioner further shows unto your honors that during the period beginning January 1, 1951, and ending March 31, 1954, it purchased from its out of state brewer, a large number of can openers under the arrangement described in paragraph three. That thereafter on the 14th day of June, 1954, under the provisions of the Alabama Use Tax Act (Article 11, Chapter 20, Title 51, Code of Alabama 1940), an assessment was made by the Department of Revenue, of the State of Alabama, against your petitioner for use tax, penalty and interest thereon, allegedly due by petitioner on said purchases for said period in the amount of three hundred seventy and 30/100 (\$370.30) dollars. That subsequent to such assessment, on the 29th day of September, 1954, said assessment was changed, corrected and made final in the amount of three hundred seventy and 16/100(\$370.16) dollars. Petitioner further shows that on the 27th day of October, 1954, it paid said assessment of three hundred seventy and 16/100(\$370.16) dollars plus the sum of One and 86/100 dollars (\$1.86) interest from the date same was made final under protest. That contemporaneously therewith petitioner filed notice of appeal to the Circuit Court of Baldwin County, Alabama, together with bond for costs as required by Section 140, Title 51, Code of Alabama, 1940.

#### PRAYER FOR RELIEF

The foregoing premises considered, your petitioner prays that your Honors will set a date for the hearing of this appeal and that upon a final

hearing thereof the Court will make and enter a decree that the  
aforementioned purchases by petitioner from the out of state  
vendor were not subject to the provisions of the Alabama Use  
Tax Act and that the assessed amount which was paid to the  
Department of Revenue of the State of Alabama under protest be  
refunded to your petitioner.

TONSMEIRE & HODNETTE

By



Attorneys for Appellant

337#

Mobile Beverages  
Inc. a. Corp.

v s.

The State Dept  
of Revenue

Received 28 day of April 1955  
and on \_\_\_\_\_ day of \_\_\_\_\_ 19\_\_\_\_  
served a copy of the within \_\_\_\_\_  
\_\_\_\_\_ service on \_\_\_\_\_

TAYLOR WILKINS, Sheriff

By \_\_\_\_\_ D. S.

V Co P

RECEIVED IN OFFICE  
MAY 1 1955  
M. S. BUTLER, Sheriff

EXEMPTED BY SERVING 2  
COPIES OF THIS WRITEN

A. L. Harne  
Com. of Revenue  
of State of Ala.  
5-2-55

FILED

APR 28 1955

ALICE J. DUCK, Register

M. S. Butler  
Sheriff Montgomery County

Mathis  
Deputy Sheriff

MOBILE BEVERAGE COMPANY, INC.,  
a corporation,

Appellant

vs

THE STATE DEPARTMENT OF REVENUE,  
STATE OF ALABAMA,

Appellee

IN THE CIRCUIT COURT OF  
BALDWIN COUNTY, ALABAMA,  
IN EQUITY

NO. \_\_\_\_\_

A N S W E R

Comes the appellee, State of Alabama, in the above-styled cause, by and through its attorneys of record and for answer to the bill of complaint, served on May 2, 1955, says:

1. Answering paragraph One of the bill, appellee admits the allegations contained therein.
2. Answering paragraph Two of the bill, appellee admits the allegations contained therein.
3. Answering paragraph Three of the bill, appellee denies the allegations contained therein and demands strict proof thereof. Appellee alleges that the appellant purchased the beer can openers at retail for storage, use, or consumption within the State of Alabama within the meaning of the provisions of Title 51, section 788, as amended, Code of Alabama 1940, and that said beer can openers were used, stored or consumed by the appellant in its business, thereby subjecting appellant to the use tax levied by section 788, supra. Appellee alleges that said can openers are not purchased and sold for resale by the appellant.
4. Answering paragraph Four of the bill, appellee admits the allegations contained therein.

NOW HAVING ANSWERED the bill of complaint as fully as it is advised is necessary, appellee respectfully prays that the Court make and enter a decree ratifying and confirming the final assessment made and entered by the State Department of Revenue on September 29, 1954, and if appellee has

prayed for the wrong relief then it prays for such other, further and different relief to which it may be entitled in the premises.

STATE OF ALABAMA

BY John Patterson  
JOHN PATTERSON, Attorney General of Alabama

Willard W. Livingston  
WILLARD W. LIVINGSTON, Counsel, Depart. of Revenue and Assistant Attorney General of Alabama

Counsel for Appellee

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STATE OF ALABAMA    |  
                          |  
MONTGOMERY COUNTY   |

I hereby certify that I have this day served a copy of the above and foregoing answer by United States mail, postage prepaid, properly addressed, on Tonsmeire & Hodnette, Annex First National Bank Building, Mobile, Alabama, attorneys of record for appellant in this cause.

This the 30 day of May, 1955.

Willard W. Livingston  
Of Counsel