

4559



STATE OF ALABAMA
DEPARTMENT OF REVENUE
LEGAL DIVISION
MONTGOMERY 2, ALABAMA

HARRY H. HADEN
Commissioner of Revenue

GUY SPARKS
Executive Assistant
Legal Division

HERBERT I. BURSON, JR.
WILLIAM H. BURTON
ARTHUR JOE GRANT
B. FRANK LOEB
JAMES R. PAYNE
H. GRADY TILLER
Assistant Counsel
T. LOMAX CRUM
Legal Research Aide

June 25, 1959

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

Re: State of Alabama vs. James S. Patterson
Case No. 4559

Dear Mrs. Duck:


We are attaching an original and two copies of a Court Order and an original and one copy of a motion to dissolve in the above-styled case.

It will be very much appreciated if you will return one signed copy of this order to us for our file.

Thanking you, I am

Very truly yours,

GUY SPARKS
Executive Assistant

BY 
HERBERT I. BURSON, JR.
Attorney

HIB:jb

STATE OF ALABAMA ex rel
MacDONALD GALLION, as ATTORNEY
GENERAL OF ALABAMA

Complainant

v.

JAMES S. PATTERSON, d/b/a
Jimmie's Cafe
Foley, Alabama

Respondent

IN THE CIRCUIT COURT

OF

BALDWIN COUNTY, ALABAMA

IN EQUITY NO. 4559


MOTION TO DISSOLVE AND MOTION TO DISMISS

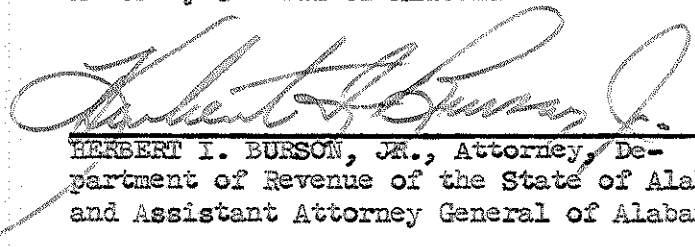
Comes now the complainant in the above-styled cause and moves this Honorable Court to dissolve the Interlocutory Decree granting a temporary injunction which was signed by the Court on June 16, 1959, enjoining the respondent from engaging in or continuing within the State of Alabama in the business of selling at retail tangible personal property covered by the provisions of the Alabama Sales Tax Act until the further order of this Court and further moves the Court to dismiss said cause, and for grounds of said motion assigns separately and severally the following:

1. For that the amounts claimed to be due from respondent under the Alabama Sales Tax Act have been paid in full.

WHEREFORE, the complainant prays that this Honorable Court will dissolve said injunction now in effect, assessing court costs to the respondent and dismissing said cause from the docket and will give such other, further and different relief as it may be entitled under the pleadings and proof of this cause.


MACDONALD GALLION, Attorney General
of Alabama



GUY SPARKS, Executive Assistant, Legal
Division, Department of Revenue of the
State of Alabama, and Special Assistant
Attorney General of Alabama


HERBERT I. BURSON, JR., Attorney, De-
partment of Revenue of the State of Alabama,
and Assistant Attorney General of Alabama

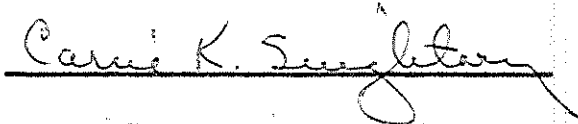
Counsel for Complainant

STATE OF ALABAMA
MONTGOMERY COUNTY

Before me, Carrie K. Singletary, a Notary Public in and for said State and County, personally appeared the undersigned, Herbert I. Burson, Jr., who being by me first duly sworn, doth depose and says he is one of the attorneys of record for the complainant and an Assistant Attorney General of Alabama, and that he has read and understood the foregoing motion and to the best of his knowledge and belief, the facts alleged therein are true and correct.


HERBERT I. BURSON, JR., Assistant
Attorney General of Alabama

SWORN to and subscribed before me
this the 25 day of June, 1959.





HARRY H. HADEN
Commissioner of Revenue

GUY SPARKS
Executive Assistant
Legal Division

STATE OF ALABAMA
DEPARTMENT OF REVENUE
LEGAL DIVISION
MONTGOMERY 2, ALABAMA

April 22, 1959

WILLIAM H. BURTON
ARTHUR JOE GRANT
B. FRANK LOEB
JAMES R. PAYNE
H. GRADY TILLER
Assistant Counsel
T. LOMAX CRUM
Legal Research Aide

Mrs. Alice J. Duck
Register in Equity
Baldwin County
Bay Minette, Alabama

Re: State of Alabama ex rel MacDonal'd Gallion, as Attorney
General of Alabama, complainant, v. James S. Patterson,
respondent. In the Circuit Court of Baldwin County
Alabama, in Equity No. _____.

Dear Mrs. Duck:

Enclosed herewith is the original and one copy of the complainant's
bill of complaint in the above-styled cause which contains an application
for a temporary and permanent injunction against the above-identified
respondent.

Please notify us of the date and time set by the Court for the
hearing.

Very truly yours,

ARTHUR JOE GRANT
Assistant Counsel

AJG:bsr
Enc. - 2

STATE OF ALABAMA ex rel
MacDONALD GALLION, as ATTORNEY
GENERAL OF ALABAMA

Complainant

v.

JAMES S. PATTERSON, d/b/a
Jimmie's Cafe
Foley, Alabama

Respondent

IN THE CIRCUIT COURT

OF

BALDWIN COUNTY, ALABAMA

IN EQUITY NO. _____

ORDER

3
12
2

This being the day set for hearing on motion for temporary injunction comes now the parties and *the respondent fails to appear* the petition being heard and considered, the Court is of the opinion that the relief set out in complainant's prayer should be granted.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Register be and is hereby ordered to issue temporary injunction in accordance with the relief prayed for in the bill of complaint. The complainant, being the State of Alabama, is relieved from requirements to file bond.

IT IS ORDERED that the respondent, his agents, servants and employees, be and are hereby enjoined from engaging or continuing to engage in the business of selling tangible personal property at retail or in engaging in any business within the State of Alabama which is covered by the Alabama Sales Tax Act until the further order of this Court.

Let the Sheriff serve a copy of this order forthwith.

DONE the 7th day of June, 1959.

CIRCUIT JUDGE - IN EQUITY SITTING

STATE OF ALABAMA ex rel
MacDONALD GALLION, as ATTORNEY
GENERAL OF ALABAMA

Complainant

v.

JAMES S. PATTERSON, d/b/a
Jimmie's Cafe
Foley, Alabama

Respondent

IN THE CIRCUIT COURT

OF

BALDWIN COUNTY, ALABAMA

IN EQUITY NO. 4559

ORDER

This being the day set for hearing on motion for temporary injunction comes now the parties, ^{and Respondent failing to appear -} and the petition being heard and considered, the Court is of the opinion that the relief set out in complainant's prayer should be granted.

IT IS, THEREFORE, ORDERED, ADJUDGED, AND DECREED that the Register be and is hereby ordered to issue temporary injunction in accordance with the relief prayed for in the bill of complaint. The complainant, being the State of Alabama, is relieved from requirements to file bond.

IT IS ORDERED that the respondent, his agents, servants and employees, be and are hereby enjoined from engaging or continuing to engage in the business of selling tangible personal property at retail or in engaging in any business within the State of Alabama which is covered by the Alabama Sales Tax Act until the further order of this Court.

Let the Sheriff serve a copy of this order forthwith.

DONE the 16 day of June, 1959.

Robert M. Starn
CIRCUIT JUDGE - IN EQUITY SITTING

FILED
JUN 16-59
ALICE J. DUCK, CLERK
REGISTER

STATE OF ALABAMA ex rel
MacDONALD GALLION, as ATTORNEY
GENERAL OF ALABAMA

Complainant

v.

JAMES S. PATTERSON, d/b/a
Jimmie's Cafe
Foley, Alabama

Respondent

IN THE CIRCUIT COURT

OF

BALDWIN COUNTY, ALABAMA

IN EQUITY NO. 4559

ORDER DISSOLVING TEMPORARY INJUNCTION AND DISMISSING CAUSE

Comes now the complainant in the above-styled cause and files a Motion to Dissolve the temporary injunction heretofore granted on June 16, 1959, and a Motion to Dismiss said cause with grounds therefor being set out in detail; and being considered by the Court it is ordered that the temporary injunction above referred to be now dissolved and said cause be and is hereby dismissed with costs assessed against the respondent herein, for which let execution issue.

DONE AND ORDERED on this the 27 day of June,
1959

FILED
JUN 27-59
ALICE J. DUCK, CLERK
REGISTER

Robert M. Stone
CIRCUIT JUDGE - IN EQUITY SITTING

STATE OF ALABAMA ex rel
MacDONALD GALLION, as ATTORNEY
GENERAL OF ALABAMA

Complainant

v.

JAMES S. PATTERSON, d/b/a
Jimmie's Cafe
Foley, Alabama

Respondent

IN THE CIRCUIT COURT

OF

BALDWIN COUNTY, ALABAMA

IN EQUITY NO. 4559

MOTION TO DISSOLVE AND MOTION TO DISMISS

Comes now the complainant in the above-styled cause and moves this Honorable Court to dissolve the Interlocutory Decree granting a temporary injunction which was signed by the Court on June 16, 1959, enjoining the respondent from engaging in or continuing within the State of Alabama in the business of selling at retail tangible personal property covered by the provisions of the Alabama Sales Tax Act until the further order of this Court and further moves the Court to dismiss said cause, and for grounds of said motion assigns separately and severally the following:

1. For that the amounts claimed to be due from respondent under the Alabama Sales Tax Act have been paid in full.

WHEREFORE, the complainant prays that this Honorable Court will dissolve said injunction now in effect, assessing court costs to the respondent and dismissing said cause from the docket and will give such other, further and different relief as it may be entitled under the pleadings and proof of this cause.

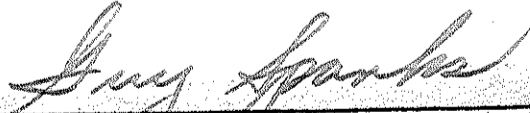
FILED

JUN 27 1959

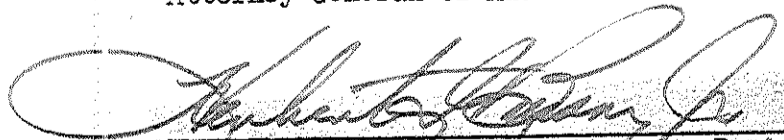
ALICE I. DUCK, CLERK
REGISTER



MACDONALD GALLION, Attorney General
of Alabama



GUY SPARKS, Executive Assistant, Legal
Division, Department of Revenue of the
State of Alabama, and Special Assistant
Attorney General of Alabama

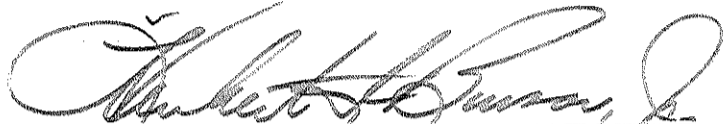


HERBERT I. BURSON, JR., Attorney, De-
partment of Revenue of the State of Alabama,
and Assistant Attorney General of Alabama

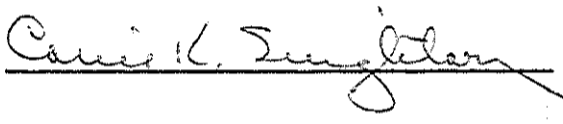
Counsel for Complainant

STATE OF ALABAMA
MONTGOMERY COUNTY

Before me, Carrie K. Singletary, a Notary Public in and for said State and County, personally appeared the undersigned, Herbert I. Burson, Jr., who being by me first duly sworn, doth depose and says he is one of the attorneys of record for the complainant and an Assistant Attorney General of Alabama, and that he has read and understood the foregoing motion and to the best of his knowledge and belief, the facts alleged therein are true and correct.


HERBERT I. BURSON, JR., Assistant
Attorney General of Alabama

SWORN to and subscribed before me
this the 25 day of June, 1959.



STATE OF ALABAMA ex rel
MacDONALD GALLION, as ATTORNEY
GENERAL OF ALABAMA

Complainant

v.

JAMES S. PATTERSON, d/b/a
Jimmie's Cafe
Foley, Alabama

Respondent

IN THE CIRCUIT COURT

OF

BALDWIN COUNTY, ALABAMA

IN EQUITY NO. _____

BILL OF COMPLAINT

TO THE HONORABLE JUDGE OF THE CIRCUIT COURT OF BALDWIN COUNTY, ALABAMA,
SITTING IN EQUITY:

Comes the State of Alabama upon the relationship of MacDonald Gallion, as Attorney General of Alabama, and shows unto this Court as follows:

1. The respondent, James S. Patterson, d/b/a Jimmie's Cafe, Foley, Alabama, is a citizen and resident of Baldwin County, Alabama, and is over the age of twenty-one years.

2. Respondent was engaged in the business of selling at retail tangible personal property within the County of Baldwin, State of Alabama, during the period August 1, 1958, through November 30, 1958, and is at the present time engaged in the business of selling at retail tangible personal property within the County of Baldwin, State of Alabama.

3. Respondent operated a place of business known as Jimmie's Cafe, Foley, Alabama, during all of the above-specified period and is presently operating said place of business at said location. The respondent during the period hereinabove specified was and is at the present time subject to the privilege or license tax imposed by the Sales Tax Law (Title 51, Chapter 20, Article 10, Sections 752-786, inclusive, as amended, Code of Alabama 1940) and did incur and create for and during said period and is at the present time incurring and creating liability to complainant as and for sales tax in an amount equal to 3% of the gross proceeds of the sales of his business, as provided by the Sales Tax Law.

4. Under the provisions of the Sales Tax Law, based on signed returns filed by respondent for the period August 1, 1958 through November 30, 1958,

the State Department of Revenue made final an assessment for sales tax against respondent, from which no appeal was taken by respondent under the provisions of Title 51, Section 140, Code of Alabama 1940, for the following period, in the amount and on the date indicated:

<u>PERIOD</u>	<u>DATE OF FINAL ASSESSMENT</u>	<u>AMOUNT</u>
August 1, 1958, thru November 30, 1958	February 13, 1959	\$91.29

Complainant avers that respondent was, during the period specified herein and is at the present time required to file with the State Department of Revenue on or before the 20th day of each month, a sales tax return for the preceding month, together with payment of the tax due. Complainant avers that at the time of the filing of this bill, respondent has not filed a sales tax return for the months of December, 1958, and January, 1959, nor paid the sales tax due for said months, as required by the Sales Tax Law.

5. The total amount of sales tax due by respondent for the period specified in Paragraph 4, except for the months of December, 1958 and January, 1959, is \$92.44, said sum including penalty and interest calculated to May 1, 1959. The amount of sales tax due by respondent for the months of December, 1958, and January, 1959, is unknown at the present time, no returns having been filed by respondent, but the amount of sales tax for said months, plus penalty and interest is due, delinquent and unpaid at the present time.

6. Complainant avers that respondent has not remitted the tax due for the above-specified months and period as required by the Sales Tax Law. Complainant avers that respondent was required under the Sales Tax Law to collect daily the amount of sales tax due from the customers of his business during the above-specified periods, but such tax, as shown above, has not been paid and is due and delinquent at the present time.

7. Complainant avers that numerous efforts have been made by the State Department of Revenue, through its agents to collect the delinquent account aforesaid from the respondent but without success. It is further averred that the only remedy of complainant which will act to prevent the continued and/or recurring violations by respondent of the Sales Tax Law is an injunction against the respondent to restrain him from engaging or continuing in this State in the business of selling tangible personal property as aforesaid.

until he has complied with all of the provisions of the said Sales Tax Law, including the filing of sales tax returns within the time prescribed by said law. The respondent in failing to comply with the Sales Tax Law as aforesaid has and is hindering, delaying and thwarting the State of Alabama in the collection of revenue necessary to sustain and maintain the State Government.

WHEREFORE, PREMISES CONSIDERED, Complainant prays that summons issue from this Court directed to the respondent, James S. Patterson, d/b/a Jimmie's Cafe, Foley, Alabama, requiring him to plead, answer or demur to this bill within the time required by law.

Complainant further prays that this Court set and fix a date for a hearing of this application for a temporary injunction and cause notice of the date to be given to the respondent.

Complainant further prays that this Court grant a temporary injunction under the provisions of Section 777, Title 51, Code of Alabama 1940, restraining and enjoining this respondent, his agents and employees from engaging or continuing within this State in the business of selling at retail tangible personal property or from engaging or continuing in any business which is covered by the provisions of the Alabama Sales Tax Act.

Complainant further prays that upon a final hearing of this cause, the Court make the temporary writ of injunction herein and herefor prayed permanent, and grant a perpetual injunction forever restraining the respondent, his agents, servants and employees from engaging or continuing within this State in the business of selling at retail any tangible personal property or engaging or continuing in any business covered by the provisions of the Alabama Sales Tax Act until the respondent shall have complied with the provisions of said law and shall have paid to the complainant, State of Alabama, the sales tax due by him, plus penalty and interest as heretofore specified in this bill.

Complainant prays for such other, further and different relief as the nature of this cause may require and to which the complainant may be

entitled, and as in duty bound will ever pray, etc.

MacDONALD GALLION
MacDONALD GALLION, Attorney General
of Alabama

GUY SPARKS
GUY SPARKS, Executive Assistant, Legal
Division, Department of Revenue, State of
Alabama, and Special Assistant Attorney
General of Alabama

ARTHUR JOE GRANT
ARTHUR JOE GRANT, Assistant Counsel,
Department of Revenue of the State of
Alabama, and Assistant Attorney General
of Alabama

Counsel for Complainant

* * * * *

STATE OF ALABAMA

MONTGOMERY COUNTY

Before me, Carrie K. Singletary, a Notary Public in and for said State and County, personally appeared the undersigned, Arthur Joe Grant, who being by me first duly sworn, doth depose and says his is one of the attorneys of record for the complainant and an Assistant Attorney General of Alabama, and that he has read and understood the foregoing bill and to the best of his knowledge and belief, the facts alleged therein are true and correct.

ARTHUR JOE GRANT
ARTHUR JOE GRANT, Assistant Attorney
General of Alabama

SWORN to and subscribed before me
this the 23 day of April, 1959.

CARRIE K. SINGLETARY
Notary Public, Montgomery County, Alabama

Filed April 24, 1959
Alice J. Luck, Register

Executed: April 29, 1959

F I A T

TO THE REGISTER OF THE CIRCUIT COURT:

The foregoing bill being presented to the undersigned for fiat,

IT IS ACCORDINGLY ORDERED by the Court that the hearing upon said application for temporary injunction be set at ____ o'clock, ____ m., on the _____ day of _____, 1959, and that this order be forthwith issued by the Register for immediate service upon the Respondent, with due return to be made as to the manner of execution of such service, such return to be endorsed upon the original of this order, in no event, less than three (3) days prior to _____, 1959.

DONE AND ORDERED this _____ day of _____, 1959.

CIRCUIT JUDGE - IN EQUITY SITTING