



HARRY H. HADEN
Commissioner of Revenue

GUY SPARKS
Executive Assistant
Legal Division

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

January 13, 1960

4816

HERBERT I. BURSON, JR.
WILLIAM H. BURTON
B. FRANK LOEB
JAMES R. PAYNE
H. GRADY TILLER
Assistant Counsel
T. LOMAX CRUM
Legal Research Aide
M. J. STEWART, JR.
Revenue Supervisor

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

Re: State of Alabama, complainant, v.
Ray Clay, respondent.
In the Circuit Court of Baldwin
County, Alabama, in Equity No. _____

Dear Mrs. Duck:

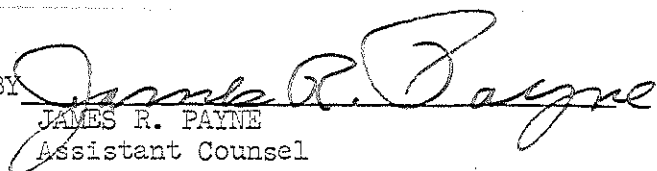
Enclosed herewith is the original and one copy of the complainant's bill of complainant in the above-styled cause which contains an application for a temporary and permanent injunction against the above-identified respondent.

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

Very truly yours,

GUY SPARKS
Executive Assistant

BY


JAMES R. PAYNE
Assistant Counsel

JRP: jp

Enc. - 2

STATE OF ALABAMA

Complainant

v.

RAY CLAY, d/b/a
RAY'S TAVERN
FOLEY, ALABAMA

Respondent

IN THE CIRCUIT COURT

OF

BALDWIN COUNTY, ALABAMA

IN EQUITY NO. _____

DECREE FOR TEMPORARY INJUNCTION

THIS CAUSE having been originally set down for hearing by the Court on February 5, 1960, and complainant and respondent appearing in open court on said date; and said respondent having requested the Court to grant additional time to enable him to come into compliance with the Sales Tax Law as referred to in the bill of complaint; and the Court accordingly continued the cause for hearing to March 15, 1960. And whereas on the said 15th day of March, 1960 said respondent having failed to appear and offer evidence in opposition to the verified bill of complaint, said verified bill is taken as confessed; and the Court having considered and understood the averments of the bill of complaint is of the opinion that complainant is entitled to the writ of injunction pendente lite as prayed, NOW THEREFORE, it is by the Court,

ORDERED, ADJUDGED AND DECREED that the application for writ of injunction pendente lite be and is hereby granted, and it is further ordered and decreed that respondent, his agents, servants and employees be and are hereby restrained and enjoined from engaging or continuing to engage within the State of Alabama in the business of selling at retail any tangible personal property whatsoever within the definition of the Sales Tax Law. Such injunction is to remain in full force and effect unless otherwise modified pending rendition of final decree in this cause.

IT IS FURTHER ORDERED that a certified copy of this decree be issued by the register to the sheriff for service upon the said respondent, due return to be made thereof, and that such service shall be in lieu of issuance or service of a formal writ of injunction.

DONE AND ORDERED in open court this the 8 day of June, 1960.

[Signature]

CIRCUIT JUDGE IN EQUITY SITTING

FILED

JUN 8 1960

ALICE J. DUCK, CLERK
REGISTER

No. 4816 770

State of Ala
vs.
Ray Clay

Received 9 day of June 1960
and on 10 day of June 1960
served a copy of the within Deed
on Ray Clay
by service on _____

TAYLOR WILKINS, Sheriff
By Carlisle D. S.

Goley
Sheriff claims 72 miles at
Ten Cents per mile Total \$ 7.20
TAYLOR WILKINS, Sheriff
BY CC
DEPUTY SHERIFF

to be served
on Ray Clay

[Faint handwritten notes, possibly "1000 of ..."]

[Faint handwritten notes]



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

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HARRY H. HADEN
Commissioner of Revenue

GUY SPARKS
Executive Assistant
Legal Division

March 30, 1960

Honorable Hubert M. Hall
Circuit Judge
Baldwin County Courthouse
Bay Minette, Alabama

Re: State of Alabama
v. Ray Clay

Dear Judge Hall:

I enclose the original of a proposed decree for your signature in the above matter; there is also enclosed two copies of the decree, one of which, as you know, is to be certified and served by the sheriff upon the respondent. We are marking the other copy "State's copy" which we would appreciate your having the register return to us for our files. Any changes in the proposed decree that you deem advisable, please go ahead and make them.

I certainly enjoyed seeing you in Bay Minette last Monday, and enjoyed talking to the other attorneys present. Please call by to see us the next time you are up this way. With kindest personal regards, I am

Yours very truly,

GUY SPARKS
Executive Assistant

BY _____
JAMES R. PAYNE
Assistant Counsel

JRP:jp
Enclosures
cc: Mrs. Alice J. Duck
Mr. E. H. Adams

STATE OF ALABAMA

Complainant

v.

RAY CLAY

Respondent

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¶

IN THE CIRCUIT COURT

OF

BALDWIN COUNTY, ALABAMA

IN EQUITY NO. _____

BILL OF COMPLAINT

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

Comes the State of Alabama, by its Attorney General, and shows unto the Court as follows:

1. The respondent, Ray Clay, 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 periods October 1, 1956 through October 31, 1956 and May 1, 1957 through June 30, 1957 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 is presently operating a place of business at Foley, Alabama under the name of Ray's Tavern, and is engaged in the business of selling tangible personal property at said location, and is subject to the taxes imposed by the Sales Tax Law, (Title 51, Chapter 20, Article 10, Sections 752-786, inclusive, as amended, Code of Alabama 1940 which chapter has been superseded by Act 100, Second Special Session 1959, effective October 1, 1959) and did incur and create for and during said periods 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. The respondent during the periods hereinabove specified was and is at the present time subject to the privilege or license tax imposed by the Sales Tax Law of this State.

4. Under the provisions of the Sales Tax Law, based on signed returns filed by respondent for the periods October 1, 1956 through October 31, 1956 and May 1, 1957 through June 30, 1957, the State Department of Revenue made final assessments 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 periods, in the amounts and on the dates indicated:

<u>PERIOD</u>	<u>DATE OF FINAL ASSESSMENT</u>	<u>AMOUNT</u>
October 1, 1956 through October 31, 1956	July 14, 1958	\$86.74
May 1, 1957 through June 30, 1957	July 14, 1958	\$177.15

Complainant avers that respondent was, during the periods 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 further avers that at the time of the filing of this bill, respondent has not filed a sales tax return for the months of August, September, and October, 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 periods specified in Paragraph 4, except for the months of August, September, and October, 1959, is \$288.47, said sum including penalty and interest calculated to February 1, 1960. The amount of sales tax due by respondent for the months of August, September, and October, 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 periods 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 and repeated efforts have been made by the State Department of Revenue, its agents and the Sheriff of Baldwin County, Alabama, to collect the delinquent sums from the respondent. It is further averred that all efforts by the State Department of Revenue, its agents and the Sheriff of Baldwin County, Alabama, to collect the delinquent sales tax liability specified above of the respondent are and have been unsuccessful. Complainant is without legal remedy to collect said sales tax due by the respondent, and it is averred that the only remedy of complainant 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 necessary revenue used to sustain and maintain the State Government.

WHEREFORE, PREMISES CONSIDERED, Complainant prays that summons issue from this Court directed to the respondent, Ray Clay, d/b/a Ray's Tavern, 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 upon 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, and under Act No. 100, Second Special Session 1959 Legislature, effective October 1, 1959, 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, As Attorney General of
Alabama

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

James R. Payne
JAMES R. PAYNE, Assistant Counsel, Department
of Revenue of the State of Alabama, and as
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, James R. Payne, 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 bill and to the best of his knowledge and belief, the facts alleged therein are true and correct.

James R. Payne
JAMES R. PAYNE, Assistant Attorney General
of Alabama

SWORN to and subscribed before me
this the 15 day of January, 1960.

Carrie K. Singletary
Notary Public, Montgomery County, Alabama

FILED

JAN 18 1960

ALICE I. DUCK, CLERK
REGISTER

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 10 o'clock, A m., on the 5th day of February, 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 4/5/60, 1959.

DONE AND ORDERED this 18 day of Jan, 1960

Hubert W. [Signature]
CIRCUIT JUDGE - IN EQUITY SITTING

* * * * *

TO THE SHERIFF OF Baldwin COUNTY:

Pursuant to the above order of the Judge, the Sheriff is hereby instructed to notify the respondent, Ray Clay, that the date of the hearing has been set for 10 o'clock, A. M., on the 5th day of Feb, 1960, and to summon him to appear, if he so desires, on the above-said date of hearing.

Archie L. Duck
REGISTER IN EQUITY