

STATE OF ALABAMA,
DEPARTMENT OF REVENUE,

vs.

BLOUNT, INC.
P. O. Box 949
Montgomery, AL 36101-0949

Taxpayer.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 92-182

FINAL ORDER

The Revenue Department assessed Blount, Inc. (Taxpayer) for State and Montgomery County use tax for the period October, 1990 through December, 1990. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on November 19, 1992. Robert Fries appeared for the Taxpayer. Assistant counsel Claude Patton represented the Department. The facts are undisputed.

On October 27, 1989, the Taxpayer contracted to purchase an airplane from Cessna Aircraft Company.

On October 31, 1990, the Taxpayer entered into a "Purchase Agreement Assignment" with Societe Generale Financial Corporation whereby the Taxpayer assigned to Societe Generale the right to purchase and take title of the airplane in question. Cessna subsequently issued a bill of sale on November 1, 1990 transferring title to the airplane to Societe Generale as purchaser.

Also on October 31, 1990, Societe Generale and the Taxpayer entered into a "Lease Agreement" whereby Societe Generale leased the airplane in issue to the Taxpayer. The lease agreement required the Taxpayer to make monthly lease payments of \$86,052.74.

The lease also provided that after ten years the Taxpayer could

make a final payment of \$4,015,277.74 and then purchase the airplane for \$1.00. Societe Generale retained title to the airplane for the term of the lease.

The Taxpayer made the monthly lease payments to Societe Generale from November, 1990 through October, 1991. The Taxpayer also included Alabama lease tax with the lease payments, which Societe Generale remitted to the Department. The Taxpayer and Societe Generale terminated the lease agreement effective October 2, 1991, and Societe Generale subsequently sold the airplane to a third party.

The Alabama sales tax is on retail sales within Alabama. Code of Ala. 1975, §40-23-2. The Alabama use tax is complimentary to the sales tax and applies to property purchased at retail outside of Alabama that is subsequently used, stored or consumed in Alabama. Code of Ala. 1975, §40-23-61.

The Taxpayer owes use tax in this case only if it purchased the airplane in question. A sale occurs with the passage of title from the seller to the buyer. Code of Ala. 1975, §7-2-106(1). In this case, Cessna transferred title to the aircraft to Societe Generale. Societe Generale in turn leased the aircraft to the Taxpayer. The Taxpayer never purchased or had title to the airplane and thus use tax is not due.

The Department argues that in substance the Taxpayer purchased the aircraft and that the lease agreement was nothing more than a financing arrangement between the Taxpayer and Societe Generale.

I disagree. This case is unlike Ex Parte Thompson Tractor Co.,

Inc., 432 So.2d 497, where the lease/purchase agreement was converted into a taxable sale. In both substance and form Cessna sold the aircraft to Societe Generale, and Societe Generale as titleholder leased the aircraft to the Taxpayer. A sale to the Taxpayer never occurred.

Societe Generale also does not owe use tax because even if Societe Generale as purchaser is considered to have used the aircraft in Alabama, property purchased for the purpose of leasing to others is exempt from use tax. Code of Ala. 1975, §40-23-60(4)i. Societe Generale clearly purchased the airplane for the specific purpose of leasing it to the Taxpayer.

The above considered, the Taxpayer does not owe use tax on the transaction in issue, and consequently, the assessments in issue are voided. This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered on December 4, 1992.

BILL THOMPSON
Chief Administrative Law Judge