U.S. XPRESS LEASING, INC. BRIDGESTONE AMERICA, INC. MICHELIN NORTH AMERICA, INC. TA OPERATING CORPORATION TRD, INC. FOUR STAR FREIGHTLINER, INC. 535 MARRIOTT DRIVE NASHVILLE, TN 37214, Petitioners, v. STATE OF ALABAMA DEPARTMENT OF REVENUE.	§ § § § § § § § §	STATE OF ALABAMA ALABAMA TAX TRIBUNAL DOCKET NOS. S. 14-1013 S. 14-1014 S. 14-1015 S. 14-1016 S. 14-1017

FINAL ORDER

U.S. Xpress Leasing, Inc. ("Petitioner") filed separate joint petitions for refund of sales tax with Bridgestone American, Inc., Michelin North America, Inc., TA Operating Corporation, Inc., TRD, Inc., and Four Star Freightliner, Inc. The joint petition the Petitioner filed with Michelin was for January 2009 through August 2011. The remaining joint petitions were for December 2008 through August 2011. The Revenue Department denied the joint petitions, and the Petitioner appealed to the Department's Administrative Law Division, now the Tax Tribunal, pursuant to Code of Ala. 1975, §40-2A-7(c)(5)a. A hearing was conducted on April 9, 2015. John Lyon represented the Petitioner. Assistant Counsel Hillary Parks represented the Revenue Department.

FACTS

The facts are undisputed.

The Petitioner is based in Chattanooga, Tennessee, and is in the business of leasing truck tractors and trailers to various lessees. The Petitioner leased truck tractors and trailers to a related company, U.S. Xpress, Inc., during the periods in issue pursuant to

a master lease agreement executed in Chattanooga in 2002.

The Petitioner purchased the tractors and trailers that it leased to U.S. Xpress from various truck dealers outside of Alabama. The dealers delivered the tractors and trailers to terminals operated by the Petitioner outside of Alabama. The Petitioner prepared the tractors and trailers for use, and U.S. Xpress drivers thereafter picked up and used the vehicles in interstate commerce throughout the country, including a substantial number of miles traveled in Alabama.

The master lease agreement required the Petitioner to keep the vehicles in good working order. Consequently, if a leased vehicle needed new tires or repairs while in Alabama, the Petitioner arranged for the work to be done at a garage or other facility in Alabama. It also purchased the tires, repair parts, and/or the other tangible property needed to perform the work from the joint petitioners/sellers. It is undisputed that the joint petitioners/sellers delivered the tires, repair parts, etc. to the Petitioner in Alabama, and consequently, that the sales were closed in Alabama.

The joint petitioners invoiced the Petitioner for the items purchased, including Alabama sales tax. The Petitioner paid the invoiced amounts and, as discussed, has now petitioned with the joint petitioners/sellers for refunds of the sales tax paid.

The Taxpayer did not have an Alabama sales tax license during the periods in issue, and also was not licensed to collect and remit Alabama lease tax to the Department during the periods. The Taxpayer accordingly did not file Alabama lease tax returns or remit Alabama lease tax to the Department on its tractor and trailer rentals during those periods.

Other relevant facts are stated in the below analysis.

ANALYSIS

The Petitioner argues that the tires, repair parts, etc. it purchased from the joint petitioners in Alabama during the periods in issue were exempt from sales tax pursuant to Code of Ala. 1975, §40-23-1(a)(9)j. That section exempts the following:

> j. A sale of tangible personal property to any person engaging in the business of leasing or renting tangible personal property to others, if tangible personal property is purchased for the purpose of leasing or renting it to others under a transaction subject to the privilege or license tax levied in Article 4 of Chapter 12 of this title against any person engaging in the business of leasing or renting tangible personal property to others.

The Petitioner asserts that the §40-23-1(a)(9)j. exemption applies because it was in the business of leasing the tractors and trailers to U.S. Xpress in Alabama during the subject periods. It contends that the exemption also applies to the tires, repair parts, and the other tangible items in issue that were used to repair and maintain the tractors and trailers in Alabama based on Department Reg. 810-6-5-.09(12). That regulation provides in pertinent part:

> The sale of tangible personal property to any person engaged in the business of leasing or renting the same tangible personal property to others in transactions subject to the rental tax is a wholesale sale and not subject to sales or use tax. This exclusion from sales and use tax also applies to replacement and repair parts purchased by the lessor for use in repairing tangible personal property leased or rented by the lessor.

I agree that if the Petitioner had been in the business of leasing the tractors and trailers in Alabama in transactions subject to Alabama's lease tax, then the tires, repair parts, etc. in issue would have been exempt from Alabama sales tax. The Petitioner's argument fails, however, because, as explained below, while the Petitioner is in the business of leasing tractors and trailers, the transactions in issue, i.e., the leasing of the tractors and trailers to U.S. Xpress, were not subject to the Alabama lease tax. The §40-

23-1(a)(9)j. exemption thus does not apply.

The Petitioner, as lessor, and U.S. Xpress, as lessee, are both located in Tennessee. The master lease agreement was executed in Tennessee. The tractors and trailers were delivered by the dealers to the Petitioner outside of Alabama and picked up by the U.S. Xpress drivers outside of Alabama. The Petitioner owned no property, had no employees, and otherwise had no ties to Alabama other than the fact that U.S. Xpress used the leased tractors and trailers in Alabama. Finally, the Petitioner did not lease tractors, trailers, or any other tangible personal property to any other lessees in Alabama during the subject periods. Given those facts, the Petitioner clearly was not in the business of leasing the tractors and trailers or any other tangible personal property in Alabama during the periods in issue in transactions subject to the Alabama lease tax.

When a lessor leases tangible personal property to a lessee outside of Alabama, as in this case, and the lessee uses the property in various states, including Alabama, again as in this case, the lessor is not subject to Alabama lease tax on the lease proceeds. This is confirmed by Reg. 810-6-5-.09(10), which specifies that "[w]here the lessor leases a truck, truck tractor, or semitrailer to a motor carrier outside this state, the receipts therefrom would not be subject to the (lease) tax although the truck, truck trailer, or semitrailer may occasionally travel in this state in interstate commerce."

The above regulation is directly on point in this case. The Petitioner leased the tractors and trailers to the lessee, U.S. Xpress, outside of Alabama. The fact that U.S. Xpress subsequently used the property in Alabama did not make the Petitioner's leasing of the vehicles to U.S. Xpress subject to Alabama lease tax.

Union Tank Car Company v. State of Alabama, Docket Corp. 04-247 (Admin. Law Div. 1/11/2005) involved Alabama's income tax and not sales or rental tax, but nonetheless illustrates the point that a lessor that leases property outside of Alabama is not doing business in Alabama simply because the lessee uses the property in Alabama.

The taxpayer in *Union Tank Car* leased railcars that were used by the lessees throughout the United States, including in Alabama. The taxpayer was located in Illinois, the leases were executed in Illinois, and the lessees picked up the railcars at points outside of Alabama. The taxpayer had no employees or property in Alabama, and had no connection with Alabama other than some of its leased railcars were used by the lessees in interstate commerce in Alabama.

The Department's Administrative Law Division, now the Tax Tribunal, held on those facts that the taxpayer was not doing business in Alabama.[1] That is, it was not in the business of leasing the railcars in Alabama.

The facts in this case are in substance identical to the facts in *Union Tank Car.* Just as the taxpayer in Union Tank Car was not in the business of leasing in Alabama just because the lessees used its railcars in Alabama, the Petitioner in this case was not in the business of leasing the tractors and trailers to U.S. Xpress in Alabama during the periods in issue. The Taxpayer thus was not subject to Alabama lease tax during those periods, in which case the tires, repair parts, etc. it purchased in Alabama during the periods were not

[1] Cases cited in *Union Tank Car* that support the above finding are *Kentucky Tax Comm. v. American Refrigerator Transit Co.*, 294 S.W.2d 554 (1956); *First National Leasing and Financial Corp. v. Indiana Dept. of State Revenue*, 598 N.E.2d 640 (1992); and *Enterprise Leasing Company of Chicago, et al. v. Indiana Dept. of State Revenue*, 779 N.E.2d 1284 (2002).

exempt from sales tax pursuant to §40-23-1(a)(9)j.

The crux of the Petitioner's argument is that a lease "occurs" where the leased property is used, not where the lease transaction occurs. "Rather, the place of use of the leased property determine(s) whether a lease is subject to tax, and in turn, whether the lessor was engaged in the business of leasing tangible personal property in Alabama." Petitioner's Post-Hearing Reply Brief at 5. I disagree.

The Taxpayer cites *Boswell v. Paramount Television Sales, Inc.*, 282 So.2d 892 (Ala. 1973), in support of the above argument. A close reading of that case shows that it supports the Department's position in this case, not the Taxpayer's.

Paramount was a California-based business that leased tapes and films to Alabama television stations. Paramount delivered the tapes and films to the local Alabama stations, the stations broadcast the tapes and films in Alabama, and then returned the items to Paramount. The crucial issue was whether Paramount was renting or leasing the tapes and films, i.e., tangible personal property, in Alabama. The Court held that it was, despite the fact that Paramount's delivery of the tapes and films into Alabama involved interstate commerce. The taxable lease transactions occurred when Paramount, the lessor, delivered the tapes and films to the stations, the lessees, in Alabama. The television stations did use the tapes and films in Alabama, but the determining factor was that the lease transactions occurred or were closed in Alabama.

The above is consistent with the definition of "Leasing or Rental" at Code of Ala. 1975, §40-12-220(5), which defines the terms as "[a] transaction whereunder the person who owns or controls the possession of tangible personal property permits another person to have possession or use thereof. . . ." A lease transaction thus occurs when and where

the lessee cedes control and possession of the leased property to the lessee.

If the above was not the case, a variety of practical problems would ensue. For example, assume that an individual leased a car at a car rental business in Phenix City, Alabama, near the Georgia border, for a total of $200. The individual then drives the car to Georgia, down through Florida, back to Alabama, again into Georgia, and finally back to the car rental business in Phenix City. If the Taxpayer is correct that the lease tax is on the use of the leased property in Alabama, the car rental business would be required to collect Alabama lease tax based on only the miles the lessee used the car in Alabama, which would as a practical matter be impossible to determine. Rather, it should collect Alabama lease tax on the entire $200 lease proceeds, as all Alabama car rental companies routinely do before the lessee takes possession of and uses the vehicle. The above example could apply to any tangible personal property leased in Alabama that the lessee could use in more than one state.

The Taxpayer also cites *State of Alabama v. General American Transportation Corp.*, Docket R. 84-107 (Admin. Law Div. 7/27/84) in support of its case. In that case, the taxpayer, an out-of-state lessor of railroad cars, leased railcars to lessees in Alabama. The Department argued that "[t]he taxable event has already taken place when the railcars are delivered to the lessees (in Alabama) prior to their being used in interstate commerce." *General American* at 4. The Division disagreed, holding that "[t]he taxable event was not delivery of the railcars, but rather was the use or possession of the railcars by the lessees during the lease periods." *General American* at 5.

I concede that the above rationale supports the Taxpayer's position. Upon further review, however, I now believe *General American* was wrongly decided, and that the

rationale of *Union Tank Car* is correct. That is, a lease transaction occurs or is closed where the lessor transfers physical possession of the leased property to the lessee. In *Paramount*, the lease transactions were closed when the California lessor delivered the tapes and films to the television stations in Alabama. Alabama lease tax was accordingly due on those transactions closed in Alabama. Conversely, where a lease transaction is closed outside of Alabama, the Alabama lease tax does not apply, i.e., the lessor is not in the business of leasing in Alabama, even if the out-of-state lessee sometimes uses the property in Alabama.

The Department's denial of the joint refunds in issue is affirmed.

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

Entered June 17, 2015.

Bill Thompson

BILL THOMPSON
Chief Tax Tribunal Judge

bt:dr
cc: Hilary Y. Parks, Esq.
Doug Derito, CPA