

ARB WHOLESALE CARS, INC.
3051 HIGHWAY 431 NORTH
ANNISTON, AL 36206,

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STATE OF ALABAMA
ALABAMA TAX TRIBUNAL

DOCKET NO. S. 15-488

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

**OPINION AND PRELIMINARY ORDER ON TAXPAYER'S
APPLICATION FOR REHEARING**

This appeal involves final assessments of State and local sales tax entered by the Alabama Department of Revenue against the above Taxpayer for August 2010 through July 2013.

A Preliminary Order was entered directing the Taxpayer to review the Department's Answer and notify the Tax Tribunal by April 17, 2015 if it disagreed with the Department's position. The Order further stated that if the Taxpayer failed to respond by the above date, the final assessments would be affirmed. The Taxpayer failed to respond, and a Final Order affirming the final assessments was entered on April 28, 2015.

The Taxpayer timely applied for a rehearing. A hearing was conducted on June 30, 2015. The Taxpayer's owner, Adam Bailey, attended the hearing. Assistant Counsel Margaret McNeill represented the Department.

The Taxpayer operated a car dealership in Anniston, Alabama during the period in issue. The Revenue Department audited the Taxpayer and determined that the Taxpayer had underpaid its sale tax during the period. It assessed the Taxpayer accordingly. This appeal followed.

The Taxpayer's owner concedes that he owes a majority of the amount assessed. He argues, however, that he was erroneously assessed approximately \$5,500 based on sales he made to out-of-state customers during the audit period. He contends that those sales should not be taxed because the out-of-state purchasers were required to pay sales tax when they registered the vehicles in their home state, and that sales tax should not be paid twice on the vehicles.

The owner explained that when he sold a vehicle to an out-of-state customer, the customer either picked up the vehicle at the Taxpayer's dealership in Alabama or had the vehicle shipped outside of Alabama. The Taxpayer may also have occasionally arranged for the vehicle to be shipped out of state.

The Department assessed the Taxpayer on its sales to the out-of-state customers because the Taxpayer failed to execute motor vehicle drive-out certificates, as required for the vehicles to be exempt from Alabama sales tax pursuant to Code of Ala. 1975, §40-23-2(4). That statute provides that a sale of a vehicle in Alabama is exempt from sales tax if it is removed from Alabama within 72 hours and thereafter registered or titled outside of Alabama. The statute further provides – "In order for the sale to be exempt from Alabama tax, the information relative to the exempt sale shall be documented on forms approved by the Revenue Department."

Pursuant to the above statute, the Department promulgated Reg. 810-6-3-.42.03. That regulation includes the form approved by the Department as a drive-out certificate.

The above regulation is in accordance with the drive-out exemption statute. Consequently, because the Taxpayer failed to properly execute drive-out certificates for the

vehicles in issue, the Taxpayer's sales to its out-of-state purchasers were not exempt pursuant to the drive-out exemption at §40-23-2(4).

As indicated, the Taxpayer's owner testified that some of the vehicles were shipped to the customers outside of Alabama. Code of Ala. 1975, §40-23-1(a)(5) defines "Sale" for Alabama sales tax purposes. A sale occurs under the above definition when and where title is transferred. The statute further provides that for purposes of determining where title transfers, a common carrier is deemed to be the agent of the seller, regardless of who selects or pays the common carrier. Consequently, the sales of the vehicles in issue that were transported to the out-of-state customers by common carrier transport were closed outside of Alabama when the common carriers, as agents for the Taxpayer/seller, delivered the vehicles to the purchasers outside of Alabama. Those sales thus were not subject to Alabama sales tax.

For the above-discussed sales to be deleted from the audit, however, the Taxpayer's owner must provide proof that the vehicles were delivered by common carrier to locations outside of Alabama. The Taxpayer is allowed until August 14, 2015 to provide the above information. Appropriate action will then be taken.

This Opinion and Preliminary Order is not an appealable Order. The Final Order, when entered, may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2B-2(m).

Entered July 6, 2015.

BILL THOMPSON
Chief Tax Tribunal Judge

bt:dr

cc: Margaret Johnson McNeill, Esq.
Adam Bailey