

BIG BOAT SALES, INC.
3306 DEL PRADO BOULEVARD S.
CAPE CORAL, FL 33904,

§

STATE OF ALABAMA
ALABAMA TAX TRIBUNAL

§

DOCKET NO. S. 16-489

§

Taxpayer,

§

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER

This appeal involves the Alabama Department of Revenue's denial of a joint petition for refund of sales tax submitted by Big Boat Sales, Inc. ("Taxpayer") for sales tax paid for the period of March 2015. The Taxpayer appealed to the Tax Tribunal pursuant to *Code of Ala. 1975*, §40-2A-7(c)(5). A hearing was conducted on September 20, 2016. The Taxpayer's representative and vice president, Bill Antar, attended the hearing. Assistant Counsel Mary Martin Mitchell represented the Revenue Department.

The facts relevant to this appeal are mostly undisputed. The Taxpayer contracted with Moody Electric, Inc., in February 2015 for the purchase of a 2013 Pursuit 385 Express vessel. The purchase price, less a \$33,500 down payment, was to be financed. The sale was contingent on the Taxpayer obtaining financing and was brokered by Gulf Coast Hatteras, LLC.

The Taxpayer paid the down payment and secured tentative financing from the bank for the balance due. On March 4, 2015, after an inspection and survey, the Taxpayer accepted the condition of the boat.

At some point after March 4, 2015, the bank notified the Taxpayer that the underwriter refused to approve the loan to the Taxpayer. The Taxpayer was notified,

however, that the underwriter would agree to loan the proceeds to Dima Antar, Bill Antar's wife and the Taxpayer's president, in her individual capacity. The bank required that Dima Antar be the actual purchaser of the boat and listed as such on the sales contract. The Taxpayer initially objected. It subsequently decided to cancel the purchase, and asked the seller to return the down payment. The seller refused. With the choice of possibly losing the \$33,500 down payment or paying \$11,725 in Alabama sales tax on the sale to Dima Antar, individually, the Taxpayer agreed to amend the contract and for Dima Antar, individually, to be the purchaser. Concerning the Taxpayer's choice to move forward with Dima Antar as purchaser the Taxpayer's representative explained:

MR. ANTAR: Okay. The cash portion was the full 95 – of that 95, 35 was paid in cash by Big Boat Sales pursuant o the contract.

After that happened, we get closer to the closing date, and you know, the whole packet to the underwriter, and the underwriter on their own decided that the – that they did not want to lend to the company. They wanted the owner of the company to be on the bill of sale and to be purchaser of record so that, you know, of course, the bank's recourse would be stronger against an individual then against a company. So between the seller and the bank, they decided amongst themselves to change the Bill of Sale to make the buyer my wife, Dima, personally, individually instead of the company.

When I found that out, I objected. We objected. And we said, you know, we refuse this. We talked about, you know, signing a waiver or giving them – indemnifying them against their potential sales tax liability, and they refused everything. And in the end, we said you know what? If you're not going to have the sale go forward with – you know, if you're going to insist on trying to collect sales tax and have the sale before it treated as an individual sale, we want to get out of the sale. Give us the refund, refund us our deposit, and let's cancel the whole transaction.

The seller refused. They said, well, you've accepted the vessel. You've signed an acceptance. And so if you do not perform on the sale, you will – we're going to turn the money over to the Court and you can fight the seller for you – it was actually 10 percent, so \$33,500 in Alabama court.

So now, I'm faced with this position. I said – you know, I objected, of course, but then I went through with the sale choosing to lose the 11- or 12,000 of sales tax instead of risking the \$33,500 against a seller who was going to fight for our money.

(T. 12 – 15).

The sale closed in Alabama in mid-March 2015, at which time the Alabama sales tax due on the sale was paid to the seller. A bill of sale was executed to Dima Antar, individually, and the boat was registered with the Coast Guard in the name of Dima Antar, individually.

The Taxpayer filed a joint petition for refund with the Revenue Department in June 2015, requesting a refund of sales tax paid to the Revenue Department in connection with the purchase of the boat. The Taxpayer's representative signed on behalf of the Taxpayer as consumer/purchaser. The petition was not signed by the seller or the broker that collected and remitted the tax to the Revenue Department. The Taxpayer asserted that tax was improperly collected because the Taxpayer was exempt from the payment of sales and use tax because it was engaged in the business of selling boats at retail. The Revenue Department determined that the Taxpayer's representative's wife, Dima Antar, individually, was the purchaser, and that because she was not a licensed Alabama retailer the sale was not a tax free sale. Consequently, the Revenue Department denied the petition, and the Taxpayer appealed.

To begin, the Revenue Department properly denied the refund because the joint petition was not signed by the required parties. Joint petitions for refund are required to be filed by both the taxpayer who collected and paid over the tax to the Revenue Department and the consumer/purchaser who paid the tax to the taxpayer." *Code of Ala. 1975, §40-*

2A-7(c)(1). Concerning a refund of the sales tax in issue, the proper parties required to submit the joint petition were the seller, Moody Electric, and the purchaser, Dima Antar, individually. Those parties did not join in the petition. The petition was submitted in the Taxpayer's name only.

It is also undisputed that Dima Antar, individually, did not have an Alabama sales tax license when the sale occurred, and was not individually in the business of selling vessels or any other tangible personal property at retail in Alabama. Consequently, even if the proper parties had joined in the refund petition, the refund would still be denied because, as explained below, the sale to Dima Antar was not an exempt wholesale sale under Alabama law.

Code of Ala. 1975, §40-23-1(a)(9) defines wholesale sale to include only "sales by wholesalers to licensed retail merchants. . ." Revenue Department Reg. 810-6-1-.144.03 provides that "all buyers of property for resale purposes are entitled to purchase at wholesale, tax free, the property they resell as regular course of business when they have secured the sales tax license required by law." Because Dima Antar was not a licensed Alabama retailer, her purchase of the vessel was a taxable retail sale and not a wholesale sale, and sales tax was properly paid. As explained by the Alabama Court of Civil Appeals in *State v. Advertiser Co.*, 337 So. 2d 942 (Ala. Civ. App. 1996):

The sales tax applies to retail sales. It is a tax paid by the ultimate consumer, and collected and returned to the State by the retailer. The word "license" is used throughout the tax statute to indicate a status conferred on a retailer by virtue of his remittance of collected sales tax in compliance with the law. A "licensed" merchant is one who remits the tax due on his sales; an "unlicensed merchant" is one who does not.

The scope of the sales tax statute does not extend to wholesale sales. However, the statutory definition of "wholesale" covers a more restricted

category of sales than the word denotes in common parlance. Whereas the ordinary meaning of wholesale includes all sales made to retailers who will resell the item, the sales tax meaning of wholesale contained in the statute is limited to those sales made to *licensed* retail merchants for purposes of resale.

Advertiser, 337 So.2d at 945.

The Revenue Department's denial of refund 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 November 21, 2016.

CHRISTY O. EDWARDS
Associate Tax Tribunal Judge

cc: Mary Martin Mitchell, Esq.
Bill Antar, CPA