

## ALABAMA TAX TRIBUNAL

EXECUTIVE FURNITURE LEASING	§	
INTERNATIONAL, LLC,		
	§	
Taxpayer,		
	§	DOCKET NO. S. 17-1431-CE
v.		
	§	
STATE OF ALABAMA		
DEPARTMENT OF REVENUE.	§	

### FINAL ORDER

The Revenue Department assessed Executive Furniture Leasing International, LLC (“Taxpayer”) for State consumers use tax for May 2013 through June 2016. The Taxpayer appealed the final assessment to the Tax Tribunal pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on June 13, 2018. Assistant Attorney General Hilary Parks represented the Department. William Payne, the Taxpayer’s sole shareholder, represented the Taxpayer.

The Taxpayer is a nationwide furniture leasing company with a large storage facility located in Dothan, Alabama (“Dothan warehouse”). During the audit period, the Taxpayer made tax-free purchases of furniture and electronics from out-of-state vendors to be used in fulfilling its furniture leasing contracts. Those purchases were shipped to the Dothan warehouse, and later delivered to the Taxpayer’s clients in the Taxpayer’s own trucks.

The Department audited the Taxpayer to determine the Taxpayer’s compliance with State and local sales and use tax laws. During the audit, the Department determined that the Taxpayer did not meet the requirements for claiming temporary storage in Alabama because the Taxpayer failed to produce documentation proving that the Taxpayer intended

to use the items in another state at the time they came to rest in Alabama. The Department subsequently taxed the Taxpayer on its costs of all furniture and electronics purchased tax-free from out-of-state vendors and delivered into Alabama.

The sole issue on appeal is whether the Taxpayer's tax-free purchases of furniture and electronics from out-of-state vendors subsequently delivered to and stored in the Dothan warehouse is exempt from use tax pursuant to Ala. Tax Reg. 810-6-5-.23, Temporary Storage and the Use Tax Law.

Unless specifically exempted, the use tax is levied on the storage, use or other consumption in this state of tangible personal property. Code of Ala. 1975, §40-23-61. Storage is defined in Code of Ala. 1974, Section 40-23-60(7), to mean, "any keeping or retention in this state for any purpose except sale in the regular course of business or subsequent use solely outside of this state of tangible personal property at retail." Ala. Tax Reg. 810-6-5-.23 provides an exemption for property temporarily stored in Alabama for subsequent use outside of this state if certain requirements are met. The regulation specifically provides:

(3) In order for property to be claimed as tax free because of temporary storage for use solely outside of Alabama, records must reflect that it was the intent of the purchaser to use the property in another state at the time of its coming to rest in Alabama. Also, records must reflect that, in fact, the property was removed from Alabama.

The Taxpayer argues on appeal that its purchases meet the requirements for exemption from tax pursuant to the temporary storage exception. Specifically, the Taxpayer asserts that it has not leased personal property in Alabama since it began operating in the early 1990's, and that it had no intention of leasing personal property in Alabama during the audit period.

The Department argues that the temporary storage regulation requires the Taxpayer to keep records indicating that its purchases were intended for lease outside of this state and to keep records reflecting that its purchases were actually delivered for use outside of Alabama. The Department asserts that the Taxpayer has failed to keep the required records, and consequently the Taxpayer is not entitled to rely on the temporary storage exclusion. I agree.

At the hearing, Payne testified that the Taxpayer never intended its out-of-state purchases of furniture and electronics to be leased to clients in Alabama. He further testified that 30 years of business, the Taxpayer had never leased personal property in Alabama. Payne testified that he closed his California and North Carolina storage facilities when he downsized the Taxpayer's business, and he purchased and opened the Dothan warehouse in 2015 because of its proximity to his Destin, Florida home. He testified that most of his lease contracts are with military personnel in markets that have been open to the Taxpayer for many years because of the Taxpayer's history with those markets. He further testified that the markets in which the Taxpayer does business were closed to the Taxpayer in Alabama and that he saw no change occurring during the audit period.

I have no reason to doubt Payne's testimony regarding the Taxpayer's intent that all purchases be subsequently delivered to other states pursuant to leasing contracts with out-of-state clients. However, to date, the Taxpayer has failed to present complete records indicating that its purchases were in fact removed from Alabama, a requirement in the regulation. Consequently, the Taxpayer cannot claim exemption from the use tax pursuant to the temporary storage regulation.

The final assessment is affirmed. The negligence penalty is waived for reasonable cause. Judgment is entered against the Taxpayer for use tax and interest for the period of May 2013 through June 2016 in the amount of \$4,839.28, plus additional interest from the date the final assessment was entered, October 20, 2017. Interest will continue to accrue until the assessment is paid in full.

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

Entered January 14, 2019.

*/s/ C. O. Edwards*

---

CHRISTY O. EDWARDS  
Associate Tax Tribunal Judge

cc: William D. Payne  
Hilary Y. Parks, Esq.