

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. S. 86-121

MONTGOMERY AVIATION, INC.
Highway 80, Dannelly Field
Montgomery, AL 36111,

§

§

Taxpayer.

§

ORDER

This case involves three preliminary assessments of State, Montgomery County and City of Montgomery sales tax entered by the Revenue Department against Montgomery Aviation, Inc. (hereinafter "Taxpayer") concerning the period January 1, 1983 through October 31, 1985. A hearing was conducted in the matter on October 1, 1986. The parties were represented at said hearing by Mr. Edward W. Sauls, CPA, for the Taxpayer, and assistant counsel Mark Griffin, for the Department. Based on the undisputed facts presented at the hearing, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The Taxpayer is in the general aviation business and sells, charters (pilot provided) and lease (no pilot provided) airplanes. During the period in issue, the Taxpayer had in inventory or operated approximately 18 airplanes at any given time. All of the airplanes were on occasion leased or chartered by the Taxpayer, and were also used as demonstrators, when necessary.

The assessments in issue concern the \$5.00 fee levied at Code

of Alabama 1975, §40-23-2(4) on the withdrawal of vehicles from stock by a dealer for use in the dealer's business. The Department audited the Taxpayer and determined that the \$5.00 per vehicle fee was due on those airplanes used by the Taxpayer as demonstrators.

The Department assessed the fee on twelve airplanes in both 1983 and 1984, and fourteen airplanes in 1985.

CONCLUSIONS OF LAW

Code of Alabama 1975, §40-23-2(4) reads in pertinent part as follows:

. . . provided, however, where a person subject to the tax provided for in this subdivision withdraws from his stock in trade any automotive vehicle or truck trailer, semi-trailer or house trailer for use by him or by his employee or agent in the operation of such business, there shall be paid, in lieu of the tax levied herein, a fee of \$5.00 per year or part thereof during which such automotive vehicle, truck-trailer, semi-trailer or house trailer shall remain the property of such person.

The Taxpayer does not dispute that an airplane is an automotive vehicle within the purview of the above statute. See Code of Alabama 1975, §40-23-1(a)(12), and also Department Regulation 810-6-1-.12. The Taxpayer does argue that the \$5.00 fee is not due because its airplanes were used for lease purposes.

The Taxpayer cites in support of its case Department Regulation 810-6-2-.04, entitled "Automotive Demonstrator, Levy of Tax". Subsection (1) of the regulation in substance tracks the language of §40-23-2(4) relative to the \$5.00 fee. It does add that the fee shall be reported on the dealer's sales tax return in

the month of withdrawal, and that sales tax is due when the vehicle is returned to inventory and subsequently sold by the dealer.

The Taxpayer argues that the \$5.00 fee is not due because all of its airplanes were used for lease purposes, and therefore should be exempt from the \$5.00 fee under subsection (2) of Regulation 810-6-2-.04, which reads as follows:

(2) The use described in the preceding paragraph does not include the withdrawal of automotive vehicles, truck trailers, semi-trailers or house trailers by a dealer for rental or leasing purposes where such dealer is engaged in business both of selling and leasing such property.

Section 40-23-2(4) provides that the fee is due on every vehicle withdrawn for use by a dealer. Clearly, any vehicle withdrawn and used as a demonstrator would come within the purview of the section. Subsection (2) of Regulation 810-6-2-.04 merely clarifies that the withdrawal of a vehicle for lease purposes is not subject to the fee. It does not grant a blanket exemption from the fee to any vehicle that has ever been leased. Thus, even if a vehicle is used for lease purposes, if it is also on occasion withdrawn from inventory and used as a demonstrator, it would be subject to the \$5.00 fee.

The intent of §40-23-2(4) is to levy a fee on demonstrators withdrawn from inventory and used by a dealer. The fee is levied in lieu of sales tax that would normally be due under the withdrawal section, Code of Alabama 1975, §40-23-1(a)(10). There is no provision indicating that the fee is not due because the

subject vehicle is also used for other taxable purposes. Consequently, the \$5.00 fee is due if the vehicle is used as a demonstrator, lease tax is due if the vehicle is also leased, and finally, sales tax would be due when the vehicle is sold.

The above considered, it is hereby determined that the assessments in issue were property entered and should be made final, with applicable interest as required by law.

Done this 7th day of October, 1986.

BILL THOMPSON
Chief Administrative Law Judge