

STATE OF ALABAMA  
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

§

v.

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DOCKET NO. S. 86-270

BILL G. CARTER  
d/b/a Carter's Home Furnishings  
P.O. Box 387  
Luverne, AL 36049,

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Taxpayer.

ORDER

The Department entered assessments against Bill G. Carter, d/b/a Carter's Home Furnishings ("Taxpayer") for State sales tax for the period January 1, 1984 through June 30, 1986; Crenshaw County sales tax for the period November 1, 1981 through June 30, 1986; City of Luverne sales tax for the period November 1, 1981 through June 30, 1986, and State lease tax for the period July 1, 1983 through June 30, 1986. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on February 17, 1988. The Taxpayer was present and represented himself. Assistant counsel J. Wade Hope appeared for the Department. Based on the evidence submitted by the parties, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

During the periods in issue, the Taxpayer operated a furniture store in Luverne, Alabama. The Taxpayer primarily contracted to furnish and install carpet, and also leased televisions, refrigerators, washing machines, and other major appliances.

The Department audited the Taxpayer using the Taxpayer's sales

and lease records and sale tax returns. The Taxpayer's sales records were incomplete for the months of July, 1983 through December, 1984. Consequently, the Taxpayer's sales tax returns were accepted as correct for those months. Sales tax liability was computed for the remaining months using the Taxpayer's sales invoices and cash receipts books. Lease tax was computed for the entire period based on the Taxpayer's cash receipts books.

During the periods in dispute, the Taxpayer leased televisions, washing machines and other major appliances from Griff's T.V. ("Griffs") in Andalusia, Alabama. The Taxpayer in turn re-leased the appliances, paid Griff's a percentage of the lease proceeds, and retained the balance.

The Taxpayer testified that his agreement with Griff's also provided that Griff's would pay lease tax on the gross proceeds that it received, and that the Taxpayer would pay on the balance.

Accordingly, the Taxpayer remitted lease tax to the Department based only on his net proceeds from the lease transactions. However, the Department's records indicate that Griff's applied for a lease tax license in August, 1985, and did not file lease tax returns or pay lease tax prior to that time. That is, Griff's did not pay lease tax on the proceeds received from the Taxpayer.

The Taxpayer argues that the appliances were obtained from Griff's "at wholesale" and that the amount paid to Griff's should not be included as part of taxable gross proceeds. No specific objections were raised by the Taxpayer relating to the Department's

sales tax audit.

The Department contends that the Taxpayer is responsible for tax on its entire gross proceeds derived from the appliance rentals, without deduction for any amounts paid to Griff's. Further, the Department argues that Griff's is exempt from lease tax on its rentals to the Taxpayer under Code of Ala. 1975, §40-12-223(4).

#### CONCLUSIONS OF LAW

The Taxpayer's sales tax returns were accepted as correct for the months of July, 1983 through December, 1984. Liability was computed for the remaining months in issue based entirely on the Taxpayer's sales invoices, cash receipt books and accounts receivable records.

The Department is authorized to use the best information available if a taxpayer fails to keep adequate records. Moore v. C.I.R., 722 F.2d 193. But in the present case, the Department either accepted the Taxpayer's returns as filed, or, where complete records were available, used those records to compute liability. Under such circumstances, the sales tax assessments must be upheld.

The lease tax assessment was also computed using the Taxpayer's records. The issue in dispute is whether the proceeds paid by the Taxpayer to Griff's should be included as part of taxable gross proceeds.

Code of Ala. 1975, §40-12-220(4) defines "gross proceeds" in part as the value proceeding from the rental of tangible personal property "without any deduction on account of the cost of the property so leased or rented . . ." Consequently, the entire amount received by the Taxpayer as rental gross proceeds would be subject to lease tax. That amount paid by the Taxpayer to Griff's for the use of the property constitutes "the cost of the property" to the Taxpayer and cannot be deducted from taxable gross proceeds.

Further, Code of Ala. 1975, §40-12-223(4) exempts the gross proceeds of a lease transaction if the lessee subsequently re-leases the property to another. That is, the gross proceeds of a lease for re-lease are exempt from the lease tax.

In the present case, Griff's leased to the Taxpayer and the Taxpayer re-leased the goods to its customers. Thus, Griff's was not liable for tax on the lease proceeds received from the Taxpayer, notwithstanding the Taxpayer's understanding to the contrary.

The above considered, the assessments in issue are correct and should be made final by the Department, with applicable interest as required by statute.

Done this 22nd day of February, 1988.

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BILL THOMPSON  
Chief Administrative Law Judge

