

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

§
§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

v.

§

DOCKET NO. R. 87-120

SECORP INDUSTRIES, INC.
P.O. Box 53069
Lafayette, LA 70505,

§
§

Taxpayer.

§

ORDER

Secorp Industries, Inc. ("Taxpayer") petitioned the Revenue Department for a refund of lease tax concerning the period December 1, 1980 through November 30, 1983. The Revenue Department denied the petition and the Taxpayer appealed to the Administrative Law Division. A hearing was conducted on March 14, 1989. Ronald A. Levitt, Esq. appeared for the Taxpayer. Assistant counsel J. Wade Hope represented the Department. Based on the evidence presented by the parties, the following findings of fact and conclusions of law are hereby entered.

FINDINGS OF FACT

The Taxpayer is engaged in the business of providing hydrogen sulfide ("sour gas") safety equipment and services to the oil and natural gas industry in Alabama. A company drilling for oil and gas is required by Alabama and federal regulations to provide extensive safeguards and safety procedures at the well site to protect the rig workers from the dangers of escaping sour gas. The Taxpayer supplies the equipment and trained technicians necessary to comply with the government regulations.

The Taxpayer provides a complete safety system at the drill site. The system involves detection and warning devices and a connected or looped oxygen supply system that can be used by the rig workers in case of a sour gas emergency. The equipment provided by the Taxpayer includes various detectors and monitors, oxygen tanks and racks, hoses, compressors, warning flags and wind socks, basic first aid equipment, personal detection devices, and individual self-contained breathing apparatus.

The technicians employed by the Taxpayer install and calibrate the various monitors and set up the oxygen tanks at various "safe" areas located throughout the well site. The equipment is periodically inspected by the technicians to insure that it is in proper working order. The technicians also initially instruct the rig workers in safety procedures and how to use the equipment, and subsequently supervise weekly training drills. The rig workers are prohibited from using the equipment except in the case of an emergency. The drilling company is held harmless and the Taxpayer is responsible for compliance with all federal and state safety regulations.

The equipment generally remains at the drill site and is available for use by the rig workers at all times that the well is uncapped. However, the technicians are present only when inspecting the equipment or training the workers, or at certain other designated times when a sour gas leak is most likely to occur.

The Taxpayer used a dual billing system during the subject period by which labor and equipment charges were separately invoiced. The customer was billed for the equipment for the entire period that the equipment remained at the drill site. However, labor was charged only when the technicians were actually present at the drill site. The Taxpayer contends that the separate billing system was instituted to accommodate its insurance company.

The Department reviewed the petition for refund and the Taxpayer's records and determined that lease tax was due on that equipment for which no corresponding labor charges were invoiced.

That is, if labor charges and equipment charges did not match in time, then the Department determined that the equipment was being leased separate from the labor services, and therefore was subject to lease tax.

CONCLUSIONS OF LAW

"Leasing" is defined by Code of Ala. 1975, §40-12-220(5) in pertinent part as follows:

(5) LEASING OR RENTAL. A transaction where under the person who owns or controls the possession of tangible personal property permits another person to have the possession or use thereof for a consideration and for the duration of a definite period of time without transfer of title to such property

The principal characteristic of a lease is that the owner gives up possession of the property so that the lessee is in possession of or uses the property. If the owner retains possession and uses the property in providing a service, the transaction does not

constitute a lease. State v. Steel City Crane Rental, Inc., 345 So.2d 1371.

In Steel City, the taxpayer provided cranes to its customers both with and without operators. The cranes provided without operators were clearly subject to the lease tax.

However, the court held that those cranes with operators were not leased because the taxpayer had not relinquished possession or use of the cranes to the customers. The customers were not allowed to operate the cranes and the taxpayer's employees had complete control over and use of the cranes at all times.

In the present case, the equipment remains at the well site and is available for use by the rig workers at all times. The rig workers are prohibited from handling the equipment under normal circumstances. However, the specific purpose for the equipment is that it should be in the possession of and used by the rig workers during a sour gas leak. The technicians do provide a service by maintaining the equipment and training the rig workers, but they do not exercise the same exclusive possession and use of the equipment as was present in Steel City. Federal and Alabama regulations both require that the rig workers must be able to use the equipment.

Under §40-12-220(5), a lease requires the giving up of "possession or use" of the property to the lessee. Actual use of the property is not essential for a lease to occur. All that is required is that the lessee must "have control thereof and the power to exercise dominion over it (equipment)". Steel City, at p.

1373. The equipment was available to and could be used by the rig workers at all times. Thus, the Taxpayer sufficiently relinquished control and use of the equipment so that the transactions constituted a lease under §40-12-220(5).

The Taxpayer's billing system affirms that the equipment was leased separate and apart from the services provided by the technicians. While the Taxpayer was responsible for providing an overall safety system at the drill site, that system consisted of (1) the rental (possession or use) of equipment to its customers, and (2) the providing of labor services by the technicians. That the equipment was at the drill site and available for use on many occasions when the technicians were not present illustrates that the equipment was not exclusively controlled and used by the technicians.

The above considered, the refund in dispute is denied by the Department. This Order constitutes the final order for purpose of judicial review under Code of Ala. 1975, §41-22-20.

Entered this 25th day of April, 1989.