

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. S. 88-103

M. LANDON THOMAS, JR.
220 Diplomat Apartment
Auburn, AL 36830,

§

§

Taxpayer.

§

FINAL ORDER

The Taxpayer, M. Landon Thomas, Jr., filed a petition for refund of casual sales (use) tax for the period October 1, 1987 through December 31, 1987. The Department denied the petition and the Taxpayer appealed to the Administrative Law Division. A hearing was scheduled for March 15, 1989. The Taxpayer was duly notified of the hearing by certified mail, but failed to appear.

The hearing proceeded with the Department represented by assistant counsel Nancy Cottle. Based on the evidence submitted in the case, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The Taxpayer's mother, Kaye Thomas, purchased a 1983 Mazda RX7 in the State of Georgia on May 20, 1987. The vehicle was given to the Taxpayer and the Taxpayer subsequently applied for a transfer of title in Lee County, Alabama on November 20, 1987.

At that time, the Lee County Tax Collector assessed and collected the "casual" use tax levied by Code of Ala. 1975, §40-23-

102. The Taxpayer petitioned for a refund of said tax, which was denied by the Department. The Taxpayer subsequently appealed to the Administrative Law Division.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-23-102 levies an excise or use tax of one and one-half percent (two percent after October 1, 1988), on the storage, use or consumption of any vehicle required to be registered in Alabama that was purchased other than at wholesale outside of Alabama.

The vehicle in question was purchased outside of Alabama, not at wholesale, and subsequently brought into the State for use by the Taxpayer. Consequently, the casual use tax levied by §40-23-102 is due on the vehicle and no refund should be issued.

The Taxpayer apparently misunderstood a letter from the Department dated January 4, 1988 which stated that the refund was being denied "[S]ince the vehicle was never titled in the name of Kaye K. Thomas, it cannot be deemed a gift from Kaye K. Thomas to M. Landon Thomas, Jr. Accordingly, the casual sales tax collected by the Lee County Tax Collector is due and cannot be refunded."

However, the relevant facts are that the vehicle was purchased at retail in Georgia and subsequently used in Alabama. The tax is due regardless of whether the vehicle was ever a gift from the mother to the Taxpayer.

The above considered, the refund petition was properly denied

by the Department. This order shall constitute the final order for purposes of judicial review according to the provisions of §41-22-20, Code of Ala. 1975.

Done and ordered this 21st day of March, 1989.