

ALABAMA TAX TRIBUNAL

FREIGHTCAR ALABAMA, LLC,	§	
Taxpayer,	§	DOCKET NO. S. 22-360-JP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

FINAL ORDER

In March 2022, the Taxpayer appealed to the Alabama Tax Tribunal from the denial by the Alabama Department of Revenue of the Taxpayer’s request for a refund of sales tax in the amount of \$63,538.03. (The Alabama Tax Tribunal is a separate state agency from the Alabama Department of Revenue.) The argument made by the Taxpayer to the Tax Tribunal (and apparently to the Revenue Department) is that its purchases of certain gases used in welding sections of railcars together should have been taxed at the machine rate of 1.5 percent instead of the regular state sales tax rate of 4%. In its Notice of Appeal, the Taxpayer referenced the Tax Tribunal’s ruling in United Launch Alliance v. Alabama Dep’t of Revenue, Docket No. S. 18-1033-JP (Opinion and Preliminary Order, Dec. 21, 2021), in which, after a trial, the Tax Tribunal ruled that the Taxpayer’s purchases of certain gases used in leak testing and structural stabilization qualified for Alabama’s reduced machine rate. Freightcar Alabama asserted, however, that its facts provided a stronger basis for relief than did the facts in United Launch Alliance. The Taxpayer also stated that the Revenue Department had approved prior refund claims that were based on the

reduced rate, so the Taxpayer did not understand why the claim currently on appeal had been denied.

In its Answer to the Taxpayer's Notice of Appeal, the Revenue Department asserted that the Taxpayer had not met its burden of proving that the gases in issue were used in such a way as to qualify for the sales tax machine rate. For example, the Revenue Department stated that "the Taxpayer has provided no analysis or documentation of how much of the gases were used for the different purposes. That and the separate metering reports will be necessary for any meaningful analysis of this issue." In reply to the Revenue Department's Answer, the Taxpayer reiterated that a Revenue Department auditor previously had agreed with the Taxpayer that its purchases of welding gases qualified for Alabama's reduced machine rate. Thus, the Taxpayer restated its lack of understanding of the Revenue Department's current position.

After the Taxpayer submitted its Reply to the Revenue Department's Answer, the Tax Tribunal set the case for trial on October 2, 2023, in the Tax Tribunal's hearing room. In response to the Order Setting Case for Trial, the Taxpayer submitted a letter to the Tax Tribunal stating the following:

This is in response to the enclosed email and related correspondence of 3/22/23 titled ORDER SETTING CASE FOR TRIAL.

Not following. Trial for what? Our understanding is that working with the Tax Tribunal is an informal process, and that all matters are ultimately decided by a Tax Tribunal Judge. As such, we will not be attending the "trial" of this case set for October 2, 2023, at 10:00 a.m., CT because it is unnecessary. No hearing requested/desired. Adjust your calendar accordingly. Please decide this matter on the basis of the petition and submission(s).

Welding gases used directly to manufacture (assemble) railcars qualify as a "Machine", and the associated imposition of the so-called "Machine" rate of Alabama sales tax at 1.5% applies as previously discussed in the cover letter of the Notice of Appeal dated 3/18/22.

If gases used by United Launch Alliance LLC *merely* for dew point testing & structural stabilization (considered an integral function of the rocket manufacturing process) can be construed as machines used in manufacturing and qualify for the reduced machine tax rate of 1.5%, then welding gases directly used to manufacture (assemble) railcars clearly qualify as well. Page 5 of the 2020 Form 10-K provided expressly states FreightCar used welding for the assembly of railcars.

Please process a sales tax refund in the amount of \$63,538.03.

Thank you for your consideration.

As noted, the Alabama Tax Tribunal is a state agency that is separate from, and independent of, the Alabama Department of Revenue. *See* Ala. Code 1975 §§ 40-2B-1; 40-2B-2(a) and (b)(2). And, in deciding Taxpayer appeals, it is commonplace for the Tax Tribunal to conduct trials, the obvious purpose of which is to allow the parties the opportunity to place into the record the facts that are necessary to prove their claims and to allow the Tax Tribunal to make informed decisions of fact and law. Statutes governing the Tax Tribunal are replete with such references. *See, e.g.* Ala. Code 1975, § 40-2B-2(k)(1) (stating that “[p]roceedings before the Alabama Tax Tribunal shall be tried de novo and without a jury”); Ala. Code 1975, § 40-2B-2(k)(2) (stating that “...the Alabama Tax Tribunal shall take evidence, conduct hearings, and issue final and preliminary orders”); Ala. Code 1975, § 40-2B-2(k)(3) (stating that “[h]earings shall be open to the public and shall be conducted in accordance with such rules

of practice and procedure as the Alabama Tax Tribunal may promulgate”); Ala. Code 1975 § 40-2B-2(k)(4) (stating that “[t]he Alabama Tax Tribunal shall not be bound by the rules of evidence applicable to civil cases in the circuit courts of this state”); Ala. Code 1975 § 40-2B-2(k)(5) (stating that “[t]estimony may be given only on oath or affirmation”); Ala. Code 1975 § 40-2B-2(k)(6) (stating that “[t]he notice of appeal and other pleadings in the proceeding shall be deemed to conform to the proof presented at the hearing...”); and Ala. Code 1975 § 40-2B-2(k)(7) (stating that, “[i]n the case of an issue of fact, the Taxpayer shall have the burden of persuasion by a preponderance of the evidence in the record, except that the Department of Revenue shall have the burden of persuasion in the case of an assertion of fraud and in other cases provided by law”).

Here, the Taxpayer’s claim that Alabama’s reduced machine rate applied is fact sensitive. Therefore, the appeal was set for trial to allow the Taxpayer the opportunity to present evidence in support of its claim and to allow the Revenue Department the opportunity to counter the Taxpayer’s claim or to be persuaded that the Taxpayer is correct. *See Game Day Tents, Inc.*, Docket No. S. 17-358-JP, Ala. Tax Tribunal (April 12, 2023) (stating that the taxpayer bears the burden of proof in a dispute involving a refund request). Ironically, the United Launch Alliance ruling cited by the Taxpayer was issued only after a trial and the submission of briefs.

However, the Taxpayer has made it clear to the Tax Tribunal that it does not desire a hearing and will not attend the one currently scheduled for

October 2, 2023. Instead, the Taxpayer requests that its appeal be decided “on the basis of the petition and submission(s).” But the filing of a Notice of Appeal is not proof of the Taxpayer’s factual claims, especially when those claims are contested by the Revenue Department’s responsive pleading. Nor is the Taxpayer’s filing of a Reply to the Revenue Department’s Answer proof of such claims. Instead, as quoted, “[t]he notice of appeal and other pleadings in the proceeding shall be deemed to conform to the **proof presented at the hearing...**” § 40-2B-2(k)(6) (emphasis added).

The Taxpayer has not met its burden of proving that the machine rate applied to its transactions. Therefore, the Revenue Department’s denial of the Taxpayer’s refund request must be, and is, upheld. Judgment is entered accordingly. The trial set for October 2, 2023, is canceled.

This Final Order may be appealed to circuit court within 30 days, pursuant to Ala. Code 1975 § 40-2B-2(m).

Entered July 24, 2023.

/s/ Jeff Patterson
JEFF PATTERSON
Chief Judge
Alabama Tax Tribunal

jp:ac

cc: Matt Mammen
Freightcar Alabama LLC
David E. Avery, III, Esq.