

ALABAMA TAX TRIBUNAL

CUSTIS CIRRUS AVIATION, LLC,	§	
AND ITS SOLE MEMBER,		
JAMES W. CUSTIS, JR., MD, PC, ¹	§	
Taxpayer,	§	DOCKET NO. S. 23-506-JP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

OPINION AND FINAL ORDER

This appeal involves a final assessment of consumer's use tax for the month of September 2021 concerning the Taxpayer's purchase of an airplane on which the Taxpayer paid no Alabama sales or use tax. A video trial was held on June 12, 2024. Jonathan P. Reynolds represented the Taxpayer, and KJ McCarter testified on the Taxpayer's behalf. David Avery represented the Revenue Department, and Vicki Gardino testified on the Revenue Department's behalf. The parties submitted post-trial briefs.

Question Presented

The dispositive question before the Tax Tribunal is whether the Taxpayer was engaged in the business of leasing tangible personal property to others, such that its purchase of a 2006 Cirrus SR22 aircraft would qualify as a wholesale transaction and thus not be subject to Alabama sales or use tax.

¹ The Taxpayer's name has been changed to reflect the Sole Member's name as noted by the Taxpayer's representative.

Facts

The parties provided the Tax Tribunal with the following stipulated facts:

1. Custis Cirrus Aviation, LLC is an Alabama limited liability company that was formed on 9/20/2021.
2. Custis Cirrus Aviation, LLC has a single member, James W. Custis Jr. MD PC and for tax purposes is disregarded as an entity separate from its owner. Custis Cirrus Aviation, LLC has not elected to be taxed as an association for income tax purposes.
3. James W. Custis Jr. MD PC has elected to be taxed as a S Corporation. It has one shareholder, James W. Custis Jr. MD.
4. On or about September 21, 2022, Custis Cirrus Aviation, LLC purchased an airplane, FAA N287DS. Custis Cirrus Aviation, LLC did not pay sales and/or use tax on this purchase.
5. Custis Cirrus Aviation, LLC leased the airplane to James W. Custis Jr. MD PC who agreed to pay not only the monthly lease payment of \$1,400 per month but also all operating costs, all capital costs, all maintenance costs, and maintain full casualty insurance on the airplane. James W. Custis Jr. MD PC further indemnifies Custis Cirrus Aviation, LLC for all losses. A copy of the lease agreement is attached as Exhibit 1.
6. Custis Cirrus Aviation, LLC owns no other airplanes and has made no other leases.
7. An Alabama Rental Tax license was issued to Custis Cirrus Aviation, LLC on or about September 22, 2021. A copy of that license is attached as Exhibit 2.
8. Custis Cirrus Aviation, LLC filed and paid rental tax on the rental collections of \$1,400 per month through November of 2023, and ceased paying rental tax due to the issuance of the Notice of Final Assessment.
9. Rental receipts reported by Custis Cirrus Aviation, LLC on the filed returns did not include operating costs, capital costs or maintenance costs paid by James W. Custis Jr. MD PC under the rental agreement.

10. The Department entered a Final Assessment of consumers use tax against Custis Cirrus Aviation, LLC and its sole member James W. Custis Jr. MD PC with the tax calculated for the purchase price of the airplane.
11. The assessment and the appeal were timely. The Alabama Tax Tribunal has jurisdiction to decide this appeal.
12. The calculation of the Final Assessment is not in issue. The issue is whether the purchase of the airplane was an exempt wholesale purchase under Ala. Code §40-23-1(a)(9)k. and Ala. Code §40-23-60(4)j.

Law and Analysis

The Taxpayer argues that it is in the business of leasing aircraft for profit. Thus, the Taxpayer asserts that the transaction involving its purchase of the plane in question qualified as a wholesale sale pursuant to Ala. Code § 40-23-1(a)(9)k and, therefore, was not subject to Alabama sales or use tax because those taxes apply to retail transactions. *See* Ala. Code §§ 40-23-2(1) and 40-23-61(a).

As referenced, sales of tangible personal property at retail generally are subject to Alabama sales tax or to the state's corresponding use tax. However, if an item of tangible personal property is purchased by a person who is "engaging in the business of leasing or renting [that] tangible personal property to others," then the transaction would be considered a wholesale sale and not subject to sales or use tax, as long as the lease transaction involving the property is subject to Alabama's lease tax in § 40-12-222. *See* § 40-23-1(a)(9)k defining "wholesale sale."

In this appeal, the key question is whether the Taxpayer was "engaging in the business of leasing" aircraft. § 40-23-1(a)(9)k. Alabama case law and the parties' stipulated facts show that the Taxpayer was not so engaged.

As noted, the Taxpayer LLC purchased an airplane and leased the plane to its sole member who agreed to pay the Taxpayer LLC a monthly lease rate, plus various costs associated with the plane. See Stipulations 4 and 5. In Stipulation 6, the parties stated: “Custis Cirrus Aviation, LLC owns no other airplanes and has made no other leases.”

In *State v GM&O Land Co.*, 275 So.2d 687 (Ala. Civ. App. 1973), which was cited by the Revenue Department in its brief, GM&O Land, a wholly-owned subsidiary of the GM&O Railroad Company, leased an IBM computer system to its parent company at the request of the parent. The initial lease term was 8 years, with GM&O Railroad required to pay GM&O Land \$7,330.11 per month. The lease agreement showed that the computer system was ordered by the parent company and then assigned to GM&O Land. The evidence also showed that the lease of the computer system by GM&O Land to its parent “was and is a single, isolated transaction and the only occasion in the entire corporate history of appellee [GM&O Land] wherein it has leased any tangible personal property of any sort to any person, firm or corporation.” *Id.* at 688.

The State of Alabama assessed GM&O Land for lease tax concerning its transaction with its parent, pursuant to the predecessor to Alabama’s current lease tax statute. That provision, § 629(22) of Title 51, Code of Ala. 1940, stated that the lease tax was levied “on each person engaging or continuing within this state in the business of leasing or renting tangible personal property ...” GM&O Land appealed the assessment to circuit court. The uncontradicted testimony submitted at trial, by

affidavit, showed that the lease of the computer by GM&O Land was the only such transaction in the company's history. The trial court ruled in favor of the state, and the company appealed to the Court of Civil Appeals.

In affirming the trial court's ruling, the appellate court stated:

As the Alabama Court of Appeals, in *Jones v. State*, 25 Ala.App. 410, 411, said in a case wherein a party was charged with engaging in a particular business endeavor without proper license:

"... 'engage in business' ... means that employment which occupies the time, attention, and labor of the person so engaged in business. That which a man occasionally engages in, as opportunity offers, or inclination prompts, is, for the time being his business; yet the law uses that term to indicate a regular and legal employment, *not one that is occasional, irregular, or illegal.* ..." [Emphasis added]

In a similar case involving an indictment for engaging in business without a license, the Alabama Supreme Court said, 'the doing a single act pertaining to a particular business will not be considered engaging in, or carrying on the business, yet a series of such acts would be so considered. *Weil et al. v. State*, 52 Ala. 19.

Therefore, to this court, in the absence of a statute specifically providing otherwise, the term 'engaging in the business of leasing or renting tangible personal property' as used in Tit. 51, § 629(22), Code of Alabama 1940, implies a continuous and regular course of dealing, rather than an irregular or isolated transaction."

State v. GM&O Land Co., 275 So.2d 687, 689 (Ala.Civ.App. 1973). *See also Black's Law Dictionary*, Fifth Ed., defining an "'isolated' sale" as "one which occurs only once or at least very infrequently within ordinary course of business."

Conclusion

Because the leasing of the plane in issue here was an isolated transaction, the Taxpayer was not "engaging in the business of leasing or renting tangible personal property to others ..." Therefore, the purchase of the plane constituted a

retail sale that was subject to taxation.

The final assessment in issue is upheld. Judgment is entered against the Taxpayer and in favor of the Revenue Department in the amount of \$8,481.04, plus additional interest that continues to accrue until the liability is paid in full.

It is so ordered.²

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

Entered May 23, 2025.

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

cc: Jonathan P. Reynolds, Esq.
Custis Cirrus Aviation, LLC
David E. Avery III, Esq.

² This ruling pretermits the need to decide whether the lease transaction in question satisfied the requirement in § 40-23-1(a)(9)k that the leasing of the tangible personal property be “to others”