

ALABAMA TAX TRIBUNAL

CUSTIS CIRRUS AVIATION, LLC, §
AND ITS SOLE MEMBER,
JAMES W. CUSTIS, JR., MD, PC, §

Taxpayer, §

DOCKET NO. S. 23-506-JP

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

**FINAL ORDER OVERRULING
TAXPAYER’S APPLICATION FOR REHEARING**

This appeal involved a final assessment of consumer’s use tax entered by the Alabama Department of Revenue 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. The Taxpayer took the position that its purchase of the airplane involved a wholesale, not retail, transaction because it began leasing the airplane pursuant to a written lease agreement which subjected the Taxpayer to Alabama’s lease tax.

The dispositive question before the Tax Tribunal was whether the Taxpayer was engaged in the business of leasing tangible personal property to others. If so, the Taxpayer’s purchase of the airplane would have qualified as a wholesale transaction and, thus, would not have been subject to Alabama’s retail sales or use tax. *See* Ala. Code § 40-23-1(a)(9)k defining “wholesale sale.” *See also* §§ 40-23-2(1) and 40-23-61(a) subjecting retail sales or the use of the property purchased to sales or use tax.

In its Amended Opinion and Final Order, the Tax Tribunal ruled that the Taxpayer was not engaged in the business of leasing aircraft, based on the parties’

stipulated facts and on the case of *State v. GM&O Land Co.*, 275 So.2d 687 (Ala. Civ. App. 1973). In that case, the appellate court held that GM&O Land was not subject to Alabama's lease tax because its lease of a computer system to its parent company "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. And here, the parties before the Tax Tribunal stipulated that the Taxpayer "owns no other airplanes and has made no other leases." Stipulation 6. Thus, the Tax Tribunal upheld the final assessment of consumer's use tax.

The Taxpayer has applied for rehearing pursuant to Ala. Code § 40-2B-2(l)(5). Concerning the Tax Tribunal's reliance on *State v. GM&O Land*, the "Taxpayer contends that this decision is inapplicable to this case and in fact supports the Taxpayer's appeal." Next, the Taxpayer states that "[t]he issue in *State v. GM&O Land Co.* was the applicability of the Alabama lease tax to an isolated transaction. The court held that lease tax was not applicable to this isolated transaction." The Taxpayer then "contends that this decision confirms that when lease tax is applicable to a transaction, this transaction was not an 'isolated transaction'." (emphasis in original) The Taxpayer continues by noting that the Revenue Department issued a rental tax license to the Taxpayer in September 2021 and that the Taxpayer has timely paid tax on its lease revenue.

First, the Tax Tribunal is uncertain how the *GM&O Land* decision is inapplicable to the Taxpayer's case yet supportive of the Taxpayer's appeal. If *GM&O*

Land supports the Taxpayer's appeal, it most certainly would seem to be applicable. However, as discussed in the Tax Tribunal's Amended Opinion and Final Order, *GM&O Land* is not supportive of the Taxpayer's appeal.

Nevertheless, the Taxpayer's Application for Rehearing is overruled for the following reasons. The appellate court in *GM&O Land* held that the taxpayer in that case was not subject to Alabama lease tax because the leasing transaction in question; *i.e.*, GM&O Land's leasing of equipment to its parent corporation, constituted "an irregular or isolated transaction'." *GM&O Land, Id.* at 689. Thus, GM&O Land was not engaged in the business of leasing tangible personal property, as required by the levying statute. This was so even though the lease agreement required GM&O Land's parent to make monthly payments of \$7,330.11 to GM&O Land. (*GM&O Land* was relied upon by the Revenue Department's Administrative Law Division in *State v. U.S. Die Casting and Development Co., Inc.*, Admin Law Div., No. L. 91-208, Final Order Nov. 24, 1993, which the Taxpayer in the appeal before the Tax Tribunal cited in its Application for Rehearing.)

Likewise, the lease agreement in the case before the Tax Tribunal was the only such agreement undertaken by the Taxpayer. Thus, the agreement constituted "an irregular or isolated transaction" as in *GM&O Land, Id.* at 689. As such, the Taxpayer here was not "engaging in the business of leasing" airplanes, so its purchase of the plane did not qualify as a wholesale transaction. Ala. Code § 40-23-1(a)(9)k. Therefore, the use tax assessment in issue is valid.

The Taxpayer's Application for Rehearing is overruled. The Tax Tribunal's

Amended Opinion and Final Order remains in effect.

This Final Order Overruling Taxpayer's Application for Rehearing may be appealed to the appropriate circuit court within 30 days, pursuant to Ala. Code § 40-2B-2(m).

Entered June 10, 2025.

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

cc: Jonathan P. Reynolds, Esq.
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