STATE OF ALABAMA DEPARTMENT OF REVENUE,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
v.	§	DOCKET NO. L. 91-181 L. 91-182
JOHN C. FAIR d/b/a Triple F Truck Leasing P.O. Box 549 Tuscaloosa, AL 35402,	§	
KAULOOSA TRUCK LEASING A partnership composed of Wesley Miller Welborn and Steven Summers Rumsy 1526 52nd Street Tuscaloosa, AL 35402,	§	
Taxpayers.	§	

FINAL ORDER

The Revenue Department assessed lease tax against John C. Fair, d/b/a Triple F Truck Leasing, for the period July 1988 through June 1990, and against Kauloosa Truck Leasing, a partnership composed of Wesley Miller Welborn and Steven Summers Rumsey, for the period November 1987 through October 1989. Triple F and Kauloosa are hereinafter referred to as "Taxpayers". The Taxpayers appeal to the Administrative Law Division and the cases were consolidated and heard on March 17, 1992. J. Sydney Cook, III represented the Taxpayers. Assistant counsel Beth Acker appeared for the Department.

FINDINGS OF FACT

The Taxpayers both leased tractor-trailer rigs to Cummings Trucking Company, Inc. during the period in issue.

The trucks were leased under standard lease agreements with the Taxpayers as lessors and Cummings as lessee. The Taxpayers

received 80% of the gross revenue earned by the trucks. Cummings initially paid all operating expenses relating to the trucks, i.e. fuel, repairs, driver payroll, insurance, taxes, etc, but was subsequently reimbursed for those expenses by the Taxpayers.

Wesley Miller Welborn, a partner in Kauloosa, and John C. Fair, the owner of Triple F, also served as president and bookkeeper/accountant, respectively, of Cummings during the subject period. In that capacity, both men selected which Cummings hauls would be handled by their own (Kauloosa and Triple F) trucks. Welborn and Fair also selected or had input as to which drivers would drive the Kauloosa and Triple F trucks. However, in all cases the drivers, if not already employed by Cummings, were hired by and became Cummings employees. Cummings dispatched the drivers and paid all expenses of employment, i.e. wages, social security, unemployment, withholding, insurance, etc. relating to the drivers. The drivers selected to drive the Taxpayers' trucks also on occasion drove other Cummings trucks not owned by the Taxpayers.

CONCLUSIONS OF LAW

The Taxpayers concede that they leased the trucks to Cummings, but argue that the leases were exempt from the lease tax under Code of Ala. 1975, §40-12-223(8). That section exempts from the lease tax all leased trucks if the "lessor furnishes a driver or drivers for each such vehicle . . ." The Taxpayers contend that they furnished the drivers for their leased trucks within the scope of

the exemption because they selected the particular drivers that would handle their trucks.

The Taxpayers' case is premised on the assumption that Fair and Welborn selected the drivers for the Triple F and Kauloosa trucks in their capacity as lessors. However, Fair and Welborn wore two hats concerning the leased trucks. on one hand they owned Triple F and Kauloosa and leased the trucks to Cummings, and on the other they were employees of Cummings. The standard lease agreement does not allow the lessor to select the driver for the truck. Just the opposite, the lease requires that Cummings will at all times have "exclusive possession, control, use and responsibility for the operation of" the leased vehicle. See paragraph 6 of standard lease. Consequently, Welborn and Fair were able to select the drivers for the Triple F and Kauloosa trucks not in their capacity as lessors, but only in their capacity as Cummings employees. Consequently, the Taxpayers did not select the drivers and clearly the exemption does not apply.

In addition, even assuming that the Taxpayers selected the drivers, the exemption would still not apply.

To be exempt the Taxpayers must have "furnished" the drivers. Having input into which of Cumming's drivers would handle their trucks is not sufficient. Rather, for a lessor to furnish a driver within the purview of the exemption, the driver must be an employee of, or at least paid by and under the control of the lessor. In

this case the drivers were employees of Cummings and were paid by and under the control of Cummings. Cummings and not the Taxpayers furnished the drivers and the exemption does not apply.

I agree with the Taxpayers that a statute must be construed to effectuate the intent of the Legislature. Hilyer v. Dixon, 373 So.2d 1123. However, the plain language of the statute must control and in cases of doubt an exemption must be construed against the taxpayer and for the Department. Brundidge Milling Co. v. State, 228 So.2d 475.

The Taxpayers also argue that if the leases are taxable, then the taxable measure should be only the net amount received under the leases. That is, the Taxpayers should be allowed to deduct all expenses relating to the trucks.

For lease tax purposes, "gross proceeds" is defined at §40-12-220(4) as "the value proceeding or accruing from the leasing of tangible personal property, without any deduction on account of the cost of the property so leased or rented, the cost of material used, labor or service cost, interest paid or any other expense whatsoever, ..."

The Taxpayers in this case received a lump sum payment of 80% of the gross earnings of each truck. Under the above section, that 80% constitutes the gross proceeds derived from the leases. No deduction can be allowed for any operating expenses relating to the trucks that were subsequently paid by the Taxpayers to Cummings.

The above considered, the assessments against both Taxpayers are correct and should be made final, with applicable interest.

Entered on April 21, 1992.

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BILL THOMPSON
Chief Administrative Law Judge