

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

v.

§

DOCKET NO. L. 91-188

L. 91-189

HENRY B. CUMMINGS, JR.
d/b/a Quality Trucking
P.O. Box 222
Tuscaloosa, AL 35402,

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L. 91-190

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L. 91-191

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L. 91-192

ABC, INC.
P.O. Box 222
Tuscaloosa, AL 35402,

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ABC RENTALS, ET AL.
P.O. Box 222
Tuscaloosa, AL 35402,

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QUALITY TRUCK LEASING, INC.
P.O. Box 222
Tuscaloosa, AL 35402,

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CHRISTOPHER A. CUMMINGS
d/b/a C & C Trucking
P.O. Box 222
Tuscaloosa, AL 35402,

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Taxpayer. §

FINAL ORDER

The Department assessed lease tax against the above Taxpayers for all or a part of the period January 1988 through June 1990. The Taxpayers appealed to the Administrative Law Division. The cases were consolidated and a hearing was conducted on February 20, 1992. Christopher and Boone Cummings appeared for the Taxpayers. Assistant counsel Beth Acker represented the Department.

FINDINGS OF FACT

Cummings Trucking Company, Inc. (Cummings Trucking) is owned by the Cummings family in Tuscaloosa, Alabama. The five companies

involved in this appeal are also owned by various members of the Cummings family and were started as a means by which the individual family members could buy trucks and then lease the trucks for use by Cummings Trucking.

The Department audited Cummings Trucking and determined that the five Taxpayers were not paying sufficient lease tax on the vehicles leased to Cummings Trucking. The leases in issue were structured as follows: The Taxpayers leased vehicles to Cummings Trucking under a standard lease agreement with the Taxpayers as lessor and Cummings Trucking as lessee. The vehicles were operated by a driver employed by Cummings Trucking and all operating expenses relating to the vehicle, i.e. fuel, repairs, payroll, etc., were paid for by Cummings Trucking. The Taxpayers subsequently received 80% of the gross amount earned by the vehicle. However, the Taxpayers were required to reimburse Cummings Trucking for all operating expenses previously paid by Cummings Trucking relative to the vehicles.

The Department included the gross amount received by the Taxpayers as taxable gross receipts subject to the lease tax, without deduction for any of the operating expenses paid by the Taxpayers. The Taxpayers argue that they should be allowed to deduct the operating expenses and should be taxed on only the net amount derived from the leases.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-12-22 levies a 1 1/2% lease tax on the leasing of automotive vehicles. The tax is measured by the gross proceeds derived by the lessor from the lease. "Gross Proceeds" is defined at §40-12-220(4) as "the value proceeding or accruing in 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 earning of each truck. Under §40-12-220(4), that amount 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 or reimbursed by the Taxpayers.

The above considered, the assessments are correct and the Department is directed to make the assessments final, with applicable interest.

Entered on March 10, 1992.

BILL THOMPSON
Chief Administrative Law Judge