

ARNOLD CUNNINGHAM
Route 1, Box 151
Millport, AL 35576,

Taxpayers,

vs.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. U. 94-213

FINAL ORDER

The Revenue Department assessed use tax against Arnold Cunningham ("Taxpayer") for the period October through December 1990, April through June 1991, and June 1992. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on September 12, 1994. The Taxpayer represented himself at the hearing. Assistant counsel Wade Hope represented the Department.

The issue in this case is whether the Taxpayer is liable for Alabama use tax on certain agricultural equipment purchased in Mississippi and subsequently brought into and used by the Taxpayer in Alabama.

The Taxpayer purchased three pieces of agricultural equipment in Mississippi during the subject period. Specifically, the Taxpayer purchased a cutter on October 22, 1990 for \$7,800.00, a tractor on April 23, 1991 for \$39,500.00, and a cultivator on June 4, 1992 for \$2,700.00. The Taxpayer subsequently used all of the equipment in Alabama.

The Mississippi Department of Revenue audited the Mississippi seller and determined that no sales tax had been paid on the equipment in Mississippi. That information was provided to the Alabama Revenue Department. The use tax assessment in issue was subsequently entered based on that information.

Alabama use tax is due on any tangible personal property purchased outside of Alabama that is subsequently used, stored or consumed in Alabama. Code of Ala. 1975, §40-23-61, et seq. The Taxpayer in this case purchased the equipment in issue in Mississippi and subsequently used the equipment in Alabama. Accordingly, use tax was properly assessed by the Department.

The Taxpayer would be allowed a credit if sales tax had been paid in Mississippi. However, the evidence shows that no sales tax was paid by the seller in Mississippi. The fact that the financing agreements entered into by the Taxpayer indicated that the gross sales price included tax is not sufficient. To the contrary, the financing agreements also show that no sales tax was paid by the Mississippi seller. In addition, on at least one sale the Taxpayer and the seller executed a certificate of interstate sale indicating that the seller would not be liable for Mississippi sales tax.

The Taxpayer did not intentionally attempt to avoid Alabama tax and in good faith believed that the seller would pay all applicable taxes. However, the seller for whatever reason failed

to pay and thus the Taxpayer is liable for the use tax in issue.

The above considered, the final assessment of State use tax in issue is upheld and judgment is entered against the Taxpayer in the amount of \$981.84.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered on September 20, 1994.

BILL THOMPSON
Chief Administrative Law Judge