

PLANTATION PONTIAC, CADILLAC,
BUICK, GMC TRUCK, INC.
Highway 431, North
Eufaula, Alabama 36027,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. S. 94-236

§

v.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER
ON APPLICATION FOR REHEARING

An Opinion and Preliminary Order was entered in this case on April 20, 1995. The Taxpayer timely applied for a rehearing on May 5, 1995. The application is denied for the reasons state below.

The Taxpayer claims that the services for which the documentation fees in issue were received were separate and apart from the sale of the vehicles, and thus should not be included as gross proceeds subject to sales tax. I disagree.

The sale of a vehicle required the Taxpayer to perform certain paperwork necessary to transfer title to the customer. Those documentation services required to transfer title directly resulted from and were an integral and related part of the sale of the vehicle. The amount received for those services thus accrued from the sale of the vehicle and is subject to sales tax.

Admittedly, the Taxpayer also performed some services not required by statute or otherwise necessary to the transfer of title, such as sending an employee to pick up the customer's tag at the probate office. But viewed as a whole, the lump-sum \$58.00 documentation fee was derived from and received primarily for documentation services

required to transfer title to the vehicle.

State v. Natco Corp., 90 So.2d 389 (1956), can be distinguished because in Natco the detailing services were separate and not a necessary part of the sale of the property in question. As stated, the documentation services in issue were a necessary and integral part of the sale of the vehicle. If the Taxpayer sold a vehicle, it was also required to transfer title to the customer. The services necessary to transfer title were a part of the sale.

The Taxpayer also failed to collect City of Eufaula and Barbour County sales tax when it sold vehicles at its facility in Eufaula. The Taxpayer now argues that because the customers paid the local use tax when they registered the vehicles in another county, the Taxpayer should not be assessed Eufaula and Barbour County sales tax on the original sale, citing Code of Ala. 1975, §40-23-2.1.

I agree that only one local sales or use tax should be paid on each taxable transaction. However, the question is where should the local tax be paid.

Prior to enactment of §40-23-2.1 in 1987, a taxpayer could pay local sales tax at the point of sale and then also be liable for a second local use tax if the property was used and consumed in a second tax jurisdiction. Section 40-23-2.1 was enacted to correct that problem.

However, §40-23-2.1 does not relieve a retailer from initial liability for local sales tax due at the point of sale. Rather, a retailer is in all cases obligated to collect sales tax at the point of sale, and the retailer's failure to collect the tax from the customer does not relieve the retailer of liability for the tax. See, Code of Ala. 1975, §40-23-26(b).

Section 40-23-2.1 should not be construed to give the parties to a sale a choice as to where to pay local tax. As stated in the Final Order, if the Taxpayer's interpretation is adopted, then the parties to a sale could elect to either pay local sales tax at the point of sale or local use tax in another county in which the property is used and consumed, depending on which jurisdiction has the lower tax rate. Clearly, that was not the intent of the Legislature in passing §40-23-2.1. The jurisdiction in which a retail sale is made, in this case Eufaula and Barbour County, is entitled to sales tax on all taxable retail sales within the jurisdiction.

As stated, I agree that local tax should only be paid once. Consequently, upon payment of the Eufaula and Barbour County tax by the Taxpayer, the Taxpayer's customers that subsequently paid the tax when registering their vehicles would be entitled to apply for a refund of that "second" tax paid, subject to any applicable statute of limitations.

The Opinion and Preliminary Order instructed the Department to review numerous drive-out certificates to be provided by the Taxpayer. The Department has reviewed those certificates, and has notified the Administrative Law Division concerning the Taxpayer's adjusted liability. Based on the above, the final assessments as adjusted are affirmed, and judgment is entered against the Taxpayer for State sales tax in the amount of \$44,684.64, Barbour County sales tax in the amount of \$34,504.00, and City of Eufaula sales tax in the amount of \$93,372.68, plus applicable interest from June 30, 1995.

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

Entered August 7, 1995.

BILL THOMPSON

Chief Administrative Law Judge