

MAJOR TONY JACOBI
1418 Big Cove Road
Huntsville, AL 35801-2639,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 98-149

FINAL ORDER

The Revenue Department denied a sales tax refund requested by Major Tony Jacobi (ATaxpayer@) for July 1997. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, '40-2A-7(c)(5)a. A hearing was conducted on April 17, 1998. The Taxpayer represented himself. Assistant Counsel Margaret McNeill represented the Department.

The Taxpayer is in the Royal Netherlands Air Force. The Netherlands is a member of the North Atlantic Treaty Organization (ANATO@). The issue in this case is whether the Taxpayer is exempt from Alabama sales tax pursuant to a treaty between the NATO members.

The Taxpayer was serving a tour of duty with the Royal Netherlands Air Force in Alabama during 1997. The Taxpayer purchased a pop-up camper from an Alabama dealer in July 1997. The Taxpayer paid Alabama sales tax of \$276.37 on the vehicle. He then petitioned the Department for a refund. The Department denied the refund. The Taxpayer appealed.

The Taxpayer claims that as a member of a NATO armed forces, he is

exempt from Alabama sales tax pursuant to an Agreement Between The Parties To The North Atlantic Treaty Regarding The Status Of Their Forces. Specifically, paragraph 1 of Article X of that Treaty reads as follows:

Where the legal incidence of any form of taxation in the receiving State depends upon residence or domicile, periods during which a member of a force or civilian component is in the territory of that State by reason solely of being a member of such force or civilian component shall not be considered as a resident therein, or as creating a change of residence or domicile for the purpose of such taxation. Members of a force or civilian component shall be exempt from taxation in the receiving State on the salary and emoluments paid to them as such members by the sending State or any tangible movable property the presence of which in the receiving State is due solely to their temporary presence there.

The Taxpayer contends that the pop-up camper is tangible movable property, and is exempted from Alabama sales tax by the last clause by the above paragraph. I agree that the camper is tangible movable property, but I disagree that it is exempt from Alabama sales tax.

The subject exemption applies only to property tax levied by a state on any motor vehicle or other tangible movable property within the state. The Alabama sales tax is not a tax on tangible property. Rather, it is a transaction tax on the retail sale of tangible property. Code of Ala., 1975, ' 40-23-1, et seq.

The Treaty does not exempt a member of the NATO armed forces from all state taxes. Rather, paragraph 2 of Article X of the Treaty specifies that except of the exemption for salary, emoluments, and tangible movable property in

paragraph 1, a member of a NATO armed forces is subject to all other taxes levied by a state, including sales tax.

The Taxpayer offered a ~~A~~waiver~~@~~ from the State of Missouri in support of his case. However, the waiver relates to the Missouri personal property tax on the Taxpayer's motor vehicle, not sales tax. The Missouri waiver thus supports the above conclusion that the Treaty exemption applies only to personal property tax.

The Department inquired with the Netherlands Embassy in Washington, D.C., and was informed that the scope of the exemption was unclear. The German Embassy informed the Department that the exemption does not apply to sales tax. The Taxpayer has offered no authority contrary to that conclusion.

The above conclusion is also supported by the general rule of statutory construction that a tax exemption must be strictly construed for the government and against the exemption. Ex parte Kimberly-Clark Corporation, 503 So.2d 304 (1986).

The Department's denial of the refund claimed by the Taxpayer is affirmed. Judgment is entered accordingly.

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

Entered June 24, 1998.

BILL THOMPSON
Chief Administrative Law Judge

BT:ks

cc: Margaret Johnson McNeill, Esq.
Major Tony Jacobi
Earl Hilyer