PASS CHATEAU PROPERTIES, LLC AND ITS SOLE MEMBER, HUGH M. CASTEIX, JR. d/b/a DAUPHIN ISLAND MARINA,	§	STATE OF ALABAMA ALABAMA TAX TRIBUNAL
Taxpayer,	§	DOCKET NO. S. 14-573
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER

The Revenue Department assessed Pass Chateau Properties LLC ("Taxpayer") for State and local sales tax for April 2010 through March 2013. The Taxpayer appealed to the Administrative Law Division, now the Tax Tribunal, pursuant to Code of Ala. 1975, §40-2A-7(b)(1)a. A hearing was conducted on March 18, 2015. John Crowley represented the Taxpayer. Assistant Counsel Duncan Crow represented the Department.

The Taxpayer owns and operates a 44 foot motorized vessel, the Duke, that is harbored at the Dauphin Island Marina on Dauphin Island, Alabama. The Taxpayer takes customers for three types of cruises on the vessel for which it charges an admission fee. The Taxpayer designates the three types of voyages as the "Student/Chaperone Cruise," the "Lighthouse Cruise," and the "Sunset Cruise."

The Student/Chaperone Cruises are essentially field trips for school children that are paid for by the school. A Taxpayer employee has developed a curriculum that complies with published Alabama education standards, and that is maintained on the Taxpayer's website.

After the vessel leaves the dock, a net designed to catch plankton and other microscopic marine organisms is pulled behind the vessel. The catch is hauled aboard,

and the Taxpayer provides the students with microscopes to examine the organisms.

A large net is subsequently used to catch fish, shrimp, and other marine species. The catch is emptied into a ten foot "touch" tank in the center of the vessel, and thereafter examined by the students. The catch is released or otherwise disposed of at the end of the trip.

The Lighthouse and Sunset Cruises are the same except for the time of day that the trips occur and the routes traveled. After the vessel leaves the dock, a net is used to catch fish, shrimp, etc. that are emptied into the touch tank and viewed by the Taxpayer's customers. The catch is then released or otherwise disposed of at the end of the trip.

The Department argues that the fees or admissions charged by the Taxpayer to its customers for the trips are subject to the public amusement gross receipts sales tax levied at Code of Ala. 1975, §40-23-2(2). That section reads as follows:

> Upon every person, firm, or corporation engaged or continuing within this state in the business of conducting or operating places of amusement or entertainment, billiard and pool rooms, bowling alleys, amusement devices, musical devices, theaters, opera houses, moving picture shows, vaudevilles, amusement parks, athletic contests, including wrestling matches, prize fights, boxing and wrestling exhibitions, football and baseball games, (including athletic contests, conducted by or under the auspices of any educational institution within this state, or any athletic association thereof, or other association whether the institution or association be a denominational, a state, or county, or a municipal institution, or association or a state, county, or city school, or other institution, association or school), skating rinks, race tracks, golf courses, or any other place at which any exhibition, display, amusement, or entertainment is offered to the public or place or places where an admission fee is charged, including public bathing places, public dance halls of every kind and description within the State of Alabama, an amount equal to four percent of the gross receipts of any such business.

The Taxpayer argues that the amusement tax does not apply because the vessel in issue is mobile, and thus is not a "place" of entertainment within the purview of the §40-23-

2(2) levy. "Although the word 'place' is admittedly indefinite, what is clear is that its use contemplates a fixed site rather than something that is movable like a car or a boat. The listing of types of places of amusement in the statute is consistent with the definition of 'place' as being fixed sites rather than movable activities." Taxpayer's Post-Hearing Brief at 5.

The Taxpayer also contends that the trips are essentially a fishing activity, and that a fishing activity does not come within the purview of §40-23-2(2), citing Alabama Attorney General Opinion No. 2006-129.

I agree with the Department. To begin, I disagree that a "place" within the scope of the §40-23-2(2) levy must be a fixed, immovable site or location. The Taxpayer cites the definition of "place" in *Black's Law Dictionary (5th Ed.)*, in support of its argument. That source defines the term as "any locality, limited by boundaries, however large or however small . . . In its primary and most general sense (the term) means locality, situation or site. . . ." The vessel in issue is a "place" within the above definition. The vessel obviously has limited boundaries, and constitutes a locality or site. The fact that it is movable is legally irrelevant. I agree with the Taxpayer that "[a] boat ride is an activity not a place," Taxpayer's brief at 5, but the boat on which the ride occurs is a place within the purview of §40-23-2(2).[1]

[1] Wrestling matches, prize fights, football and baseball games, and other athletic events are also "activities," but the arenas, fields, stadiums, etc. in which those activities are held are "places" within the purview of §40-23-2(2). Likewise, the admission fees paid to attend those activities are clearly subject to the amusement tax.

I also disagree that the trips or cruises constitute nontaxable fishing activities. The above cited Attorney General's opinion does hold that "hunting and fishing activities are not activities subject to the (§40-23-2(2)) amusement tax. . . ." But while fish, shrimp, plankton, etc. are netted during the trips, the fees or admissions paid by the Taxpayer's customers are not for a "fishing activity." That is, the customers do not pay to fish. Rather, they pay the fee to enjoy the cruise and to view, examine, and/or study the marine species that the vessel's crew nets during the cruise. I understand that the customers' viewing of and examining the marine species in the tank is an essential part of the trip, and that the customers could not do so but for the crew netting the species, but the trip is not in substance a fishing activity.

The §40-23-2(2) levy applies broadly to "any other place at which any exhibition, display, amusement, or entertainment is offered to the public *or* place or places where an admission fee is charged, . . ." A tank full of fish, shrimp, etc. can accurately be described as an exhibition or display, and certainly, viewing and examining the fish and the other marine species in the tank is or can be amusing and entertaining. In any case, the vessel is clearly a place "where an admission fee is charged," which by itself triggers the tax.

The final assessment is affirmed. Judgment is entered against the Taxpayer for $3,155.46. Additional interest is also due from the date the final assessment was entered, Mary 14, 2014.

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

Entered May 21, 2015.

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BILL THOMPSON
Chief Tax Tribunal Judge

bt:dr
cc: Duncan R. Crow, Esq.
John J. Crowley, Jr., Esq.