

DBI MARINE PROPERTIES, LLC §
And its Sole Member Donald Bruce Irwin
2147 RIVERCHASE OFFICE ROAD §
BIRMINGHAM, AL 35244-1836

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
ALABAMA TAX TRIBUNAL

DOCKET NO. S. 15-652

FINAL ORDER

The Revenue Department assessed DBI Marine Properties, LLC (“Taxpayer”) for consumer use tax for April 2010. The Taxpayer appealed to the Tax Tribunal pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on October 20, 2015. Tom Zoebelein represented the Taxpayer. Assistant Counsel Margaret McNeill represented the Department.

The Taxpayer was organized in 2008 for the purpose of owning, leasing, or operating boats, yachts, or sailing vessels in the Western Hemisphere. In June 2009, the Taxpayer ordered a 68 foot Hatteras 68 Convertible through Gulf Coast Hatteras, LLC in Orange Beach, Alabama. The Buyer’s Closing Statement indicated that the manufacturer would deliver the vessel to the Taxpayer in New Bern, North Carolina.

The manufacturer in North Carolina subsequently installed over \$800,000 in optional equipment on the vessel. It then delivered the vessel to the Taxpayer in North Carolina in November 2009.

The Taxpayer’s owner intended to use the boat as a charter fishing vessel in the Caribbean. On its voyage to the Caribbean, however, the boat developed mechanical problems. The Taxpayer consequently returned the boat to the manufacturer for repairs.

The Revenue Department contacted the Taxpayer by letter in December 2012 and asked the Taxpayer to verify that the Taxpayer had previously paid sales or use tax on the vessel. It is not known what prompted that letter. In any case, the Taxpayer apparently indicated in a February 21, 2013 response to the Department, which is not in evidence, that during the vessel's return trip to North Carolina for repairs, "the vessel stayed under various short-term mooring agreements which may have included a brief stay in Alabama." Department's Answer at 1. The Department subsequently entered the final assessment in issue.

The Department submitted into evidence at the October 20 hearing a Coast Guard Vessel Documentation document, and also a Marine Berth Lease between the Taxpayer's owner and Orange Beach Marina. The Coast Guard document showed the port for the subject vessel to be Orange Beach, Alabama, with a document issuance date of December 2, 2009. The Marina Berth Lease was executed on April 1, 2010, effective that date.

The Taxpayer's representative also submitted a ship's log for the subject vessel at the October 20 hearing. The log shows that the vessel was initially used in the waters off of South Carolina, Florida, the Florida Keys, and the Caribbean. It first arrived at Orange Beach, Alabama for a short stay in early January 2010. The vessel was thereafter used in the waters off of Florida, the Florida Keys, the Caribbean, and periodically in Alabama.

The Taxpayer argues that the vessel was exempt from use tax pursuant to Code of Ala. 1975, §40-23-62(17). That statute exempts vessels over five tons displacement that are registered with the U.S. Coast Guard and licensed by the State of Alabama, and that are purchased from the manufacturer. The Department contends that the §40-23-62(17)

exemption does not apply because the Taxpayer purchased the vessel from the Hattaras dealer in Orange Beach, and not from the North Carolina manufacturer.

The Hattaras company apparently requires a purchaser to order a vessel through one of its licensed dealers. But whether the Taxpayer purchased the subject vessel from the Orange Beach dealer or the North Carolina manufacturer is irrelevant because there is no evidence the vessel was intended for and first used in Alabama, as required for the Alabama use tax to apply.

Alabama's use tax applies to property purchased for first use in Alabama that is put to first use in Alabama. *Boyd Brothers Transp., Inc. v. State, Dept. of Revenue*, 976 So.2d 271 (Ala. Civ. App. 2007). The sale of the subject vessel to the Taxpayer occurred when the manufacturer delivered the vessel to the Taxpayer in North Carolina.¹ The Taxpayer claims that it intended to first use the vessel as a charter fishing boat in the Caribbean. The Taxpayer began using the vessel in Florida, the Florida Keys, and the Caribbean, but unfortunately, the vessel developed mechanical problems and had to be returned to the manufacturer in North Carolina for repairs. During the return trip, the vessel apparently had "a brief stay in Alabama" pursuant to a short term mooring agreement, but other than that "possible brief stay," there is no evidence that the vessel was otherwise ever used in Alabama. There is also no evidence that the vessel was purchased for first use in Alabama or actually first used in Alabama.

Because the vessel was purchased for first use outside of Alabama, and because there is no evidence that the vessel was ever substantially used in Alabama's waters, the

¹ The sale was closed when the vessel was delivered to the Taxpayer in North Carolina. Consequently, the sale also was not subject to Alabama sales tax.

Alabama use tax cannot apply. And even if the vessel was moored in Alabama for a short period, the use tax temporary storage exemption could apply, depending on the facts, in which case the Alabama use tax still would not apply. See, Reg. 810-6-5-.23.

The final assessment in issue is voided. Judgment is entered accordingly.

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

Entered April 28, 2016.

BILL THOMPSON
Chief Tax Tribunal Judge

bt:dr

cc: Mary Martin Mitchell, Esq.
Thomas C. Zobebelein, CPA