

TRIPLE B MECHANICAL BULL
2050 COUNTY ROAD 616
HANCEVILLE, AL 35077,

Taxpayer,

v.

CULLMAN COUNTY.

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STATE OF ALABAMA
ALABAMA TAX TRIBUNAL

DOCKET NO. COUNTY 17-101-JP

FINAL ORDER

Cullman County entered a final assessment of sales and rental tax against Mr. and Mrs. Paul Chamblee, d/b/a Triple B Mechanical Bull (“Taxpayers”), for the periods of August 2013 through September 2016.¹ The Taxpayers timely appealed, and a hearing was held in Hoover on July 20, 2017. The Taxpayers were represented by Greg Cook, and Cullman County was represented by Chad Floyd.

The Taxpayers operated a mechanical bull in the State of Alabama during the audit periods. At times, the Taxpayers charged riders a fee on a per-ride basis. At other times, the Taxpayers were paid a flat fee by an event sponsor to operate the bull at a certain place on a certain date so that attendees of the event could ride the bull. In those instances, riders did not pay on a per-ride basis because the flat fee paid by the event sponsor covered the charges for individual riders.

As stated, Cullman County’s final assessment consisted of an amount for sales tax and a separate amount for rental tax. The Taxpayers argued on appeal that no rental tax was due because they never relinquished operational control or possession of the machine to others due to safety concerns, and thus no rental occurred. Concerning sales tax, the

¹ The assessment includes sales tax for both Cullman County and the City of Cullman, pursuant to City of Cullman Resolution No. 2003-38, in which the city requested the county to collect its sales and use tax.

Taxpayers stated that they learned during the audit process that the tax was due on amounts they received on a per-ride basis. Therefore, they do not contest that portion of the assessment. The Taxpayers contested the assessment of sales tax on flat-fee amounts, however, because of conversations they stated they had with personnel in the Alabama Department of Revenue.

Cullman County agreed with the Taxpayers concerning rental tax and acknowledged that that portion of the assessment should be voided. However, the County argued that the taxable measure of the rental tax should be included in the assessment's sales tax measure and subjected to sales tax. The County thus argued that the method by which the Taxpayers were paid – on a per-ride basis or on a flat-fee basis – was irrelevant for sales tax purposes.

During the hearing, the Taxpayers testified that they have no dispute with the numbers used to determine the taxable measure for sales tax purposes or with the tax calculations. Instead, their only contention concerns whether sales tax is due on flat-fee amounts paid to the Taxpayers by event sponsors.

Among other situations, Alabama's sales tax is levied upon "every person, firm, or corporation engaged or continuing within this state in the business of conducting or operating places of amusement or entertainment, . . . , amusement devices, . . . , skating rinks, race tracks, golf courses, or any other place at which any exhibition, display, amusement, or entertainment is offered to the public. . . ." Ala. Code 1975, § 40-23-2(2).

The so-called "amusement tax" is levied as a percentage of the business's "gross receipts."

Id. The county and city levys at issue here are virtually identical to the quoted language from the state levy. See Act 1963-66 and Cullman County Resolution No. 2012-19,

Section 1(b), and City of Cullman Ordinance No. 2003-14, Section 1(b). And the county and city have each subjected their levy to the state's definition of relevant terms and phrases. See Cullman County Resolution No. 2012-19, Section 2, and City of Cullman Ordinance No. 2003-14, Section 2.

Clearly the mechanical bull operated by the Taxpayers fits within the category of "amusement devices." At the least, the place at which the bull was operated constituted "any other place at which any exhibition, display, amusement, or entertainment [was] offered to the public." The Taxpayers at least implicitly acknowledge this by agreeing that their per-ride receipts are subject to sales tax. Therefore, the question is whether the amounts received from flat fees also are subject to the tax.

As stated, the measure of the tax is "gross receipts," which is defined by statute as ". . . all receipts actual and accrued. . . ." Ala. Code § 40-23-1(a)(8) (emphasis added). Further, a Department of Revenue regulation states that "[t]he total receipts accruing from the operation of places of amusement or entertainment are subject to the sales tax." Ala. Admin. Code 810-6-1-.125(1) (emphasis added). Therefore, the Taxpayers' gross receipts from the operation of the mechanical bull, including receipts received on a flat-fee basis, are subject to the local sales tax.

All persons involved in this appeal conducted themselves in a very professional and respectful manner, and the Taxpayers seem to be very honest and sincere people who did not understand the tax laws at issue, but who wanted a clear, final answer. All penalties assessed against the Taxpayers are waived.

The rental tax portion of the final assessment is voided. The Cullman County sales tax portion of the final assessment is upheld in the amount of \$685.36 in tax and \$173.40

in interest. The City of Cullman sales tax portion of the final assessment is upheld in the amount of \$76.16 in tax and \$19.28 in interest. Additional interest will accrue after July 10, 2017, until the date of payment. Judgment is entered accordingly.

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

Entered August 1, 2017.

JEFF PATTERSON
Chief Judge
Alabama Tax Tribunal

jp:dr
cc: J. Chad Floyd, Esq.
Paul Chamblee