ALABAMA TAX TRIBUNAL

UNIVERSITY STATION RV RESORT, LLC,	§	
Taxpayer,	§	DOCKET NO. S. 19-1379-LP
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER

This appeal involves a final assessment of lodgings tax for February 1, 2016, through January 31, 2019. A hearing was conducted on March 3, 2022. John J. Crowley, Jr., represented the Taxpayer. Assistant Counsel David E. Avery, III, represented the Revenue Department. The parties thereafter submitted post-hearing briefs.

Whether the Taxpayer was subject to the Transient Occupancy Tax under the Previous Version of Ala. Code 1975, §40-26-1

The first issue to be determined is whether the Taxpayer's rental of lots on which to park recreational vehicles was taxable pursuant to § 40-26-1, Ala. Code 1975, as that statute existed during the audit years. Prior to June 5, 2019, § 40-26-1 provided, in pertinent part:

> "There is levied and imposed, in addition to all other taxes of every kind now imposed by law, a privilege or license tax upon every person, firm, or corporation engaging in the business of renting or furnishing any room or rooms, lodging, or accommodations to transients in any hotel, motel, inn, tourist camp, tourist cabin, or any other place in which rooms, lodgings, or accommodations are regularly furnished to

transients for a consideration…."

The Taxpayer points out that, in Gulf Coast Elks Lodge 2782 v. State of Ala. Dep't of Rev., S. 13-137 (Admin. Law Div. 7/9/13), the Administrative Law Division of the Revenue Department considered the issue whether a Recreational Vehicle ("R.V.") park that rents spaces for customers to park R.V.s was providing an accommodation within the meaning of § 40-26-1. The Administrative Law Judge noted that, at that time, Ala. Admin. Code r. 810-6-5-.13(5) provided:

> "The lodgings tax shall be collected by all persons engaged in the business of renting or furnishing rooms or other accommodations in any hotel, motel, rooming house, apartment house, lodge, inn, tourist cabin, tourist court, tourist home, camp, trailer court, marina, convention center, or any other place where rooms, apartments, cabins, sleeping accommodations, mobile home accommodations, recreational trailer parking accommodations, boat docking accommodations, or other accommodations are made available to travelers, tourists, or other transients."

(emphasis added). The Administrative Law Judge stated that an "accommodation" is defined in the American Heritage Dictionary 4th Ed. at 8 as "[r]oom and board; lodgings" and, therefore, concluded that the tax imposed by §40-26-1 "does not apply to RV parks … that only rent out spaces on which customers can park their own accommodations, i.e., recreational vehicles."[1]

On the other hand, two opinions issued by the Alabama Attorney General in 1997 and 2004 opined that rental spaces in an R.V. park are subject to the tax imposed by §40-26-1.[2] See Attorney General Opinion 97-00291 (9/24/97) and

[1] The Revenue Department notes that the Administrative Law Opinion at issue was a preliminary opinion, not a final order, and that the parties ultimately settled the case at issue.

[2] On May 21, 2013, the attorney general issued another opinion that favorably referenced the 1997 and 2004 opinions in construing a City Ordinance. See Attorney General Opinion 2013-050.

Attorney General Opinion 2004-192 (July 30, 2004). Specifically, the attorney general opinion issued on July 30, 2004, opined that, because there is "a clear distinction made between 'rooms,' 'lodgings,' and 'accommodations'..., by negative inference, 'accommodations' refers to things not contained within the definitions of 'rooms' or lodgings.'" The Attorney General stated that the administrative rule in effect at that time referenced 'house trailer parking accommodations" as taxable under § 40-26-1. The Attorney General opined that the fact that the legislature had reenacted the law without substantial change indicated that "'accommodations' includes within its ambit the renting of space for tents, trailers, and recreational vehicles."

Effective June 5, 2019, the legislature amended § 40-26-1, Ala. Code 1975, to provide, in pertinent part:

> "There is levied and imposed, in addition to all other taxes of every kind now imposed by law, a privilege or license tax upon every person, firm, or corporation engaging in the business of renting or furnishing any room or rooms, lodging, or accommodations to transients in any hotel, motel, inn, tourist camp, tourist cabin, marine slip, place or space for tent camping, place or space provided for a motor home, travel trailer, self-propelled camper or house car, truck camper, or similar recreational vehicle commonly known as a R.V., or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration."

(emphasis added).

The parties disagree whether the addition of a "place or space provided for ... a RV" to the statute was an alteration or a clarification. I begin my analysis by interpreting the statute as it existed prior to June 5, 2019.

> "'In ascertaining the legislature's intent in enacting a statute, [a

> court should] first attempt to assign plain meaning to the language used by the legislature. ... [The Alabama Supreme Court] has held that "[t]he fundamental rule of statutory construction is to ascertain and give effect to the intent of the legislature in enacting the statute. If possible, the intent of the legislature should be gathered from the language of the statute itself." Volkswagen of America, Inc. v. Dillard, 579 So. 2d 1301, 1305 (Ala. 1991)."

Bargsley v. Authority (In re Birmingham Airport Auth.), 274 So. 3d 964 (Ala. 2018).

The query is whether a space provided for an R.V. is included within the meaning of the phrase "or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for a consideration". The Revenue Department contends that the provision of an R.V. space is an "accommodation".

Merriam-Webster defines accommodation as:

> "1: something supplied for convenience or to satisfy a need: such as
>
> > "a: lodging, food, and services or traveling space and related services —usually used in plural"

Merriam-Webster.com Dictionary, Merriam-Webster, https://www.merriam-webster.com/dictionary/accommodation.

A space provided for an R.V. clearly fits within the meaning of a "traveling space" that is "supplied for convenience or to satisfy a need". I note that the Administrative Law Judge utilized a narrower definition of accommodation, specifically ""[r]oom and board; lodgings". As the attorney general opinions recognize, however, the clear distinction in the statute made by listing "rooms," "lodgings," and "accommodations," makes it clear that the legislature intended for

accommodations to mean something separate and apart from lodgings or rooms. See, e.g., Ex parte Uniroyal Tire Co., 779 So. 2d 227, 236 (Ala. 2000) (“‘There is a presumption that every word, sentence, or provision was intended for some useful purpose, has some force and effect, and that some effect is to be given to each, and also that no superfluous words or provisions were used.’” (quoting Sheffield v. State, 708 So. 2d 899, 909 (Ala. Crim. App.), cert. denied, 708 So. 2d 911 (Ala. 1997)). Additionally, as the attorney general opinions point out, despite the corresponding administrative regulation having long interpreted § 40-26-1 as including spaces provided for house trailers, the legislature has reenacted the statute multiple times without changing the statute to indicate its disagreement with that interpretation. See, e.g., Alabama Metallurgical Corp. v. Alabama Public Service Com'n, 441 So. 2d 565, 573 (Ala. 1983) ("'The weight to be given an administrative interpretation is increased when the Legislature, in reenacting the law fails to indicate in any way its disapproval of the settled administrative construction.'" (quoting State v. Southern Electric Generating Co., 274 Ala. 668, 670, 151 So. 2d 216, 217 (1963)."

The Taxpayer argues that the legislature’s amendment of § 40-26-1 to specifically list the provision of R.V. spaces indicates that the rental of such spaces was not previously taxable. The Revenue Department, on the other hand, argues that the amendment merely clarified the legislature’s intent to include the provision of R.V. spaces as a taxable accommodation.

> “‘To determine whether the amendment clarifies the prior law or alters it requires a careful comparison of the original and amended statutes.” Ferrell v. Dep't of Transp., 334 N.C. 650, 659, 435 S.E. 2d 309, 315 (1993). ‘If the statute initially “fails expressly to address a particular

> point" but addresses it after the amendment, "the amendment is more likely to be clarifying than altering.'" Ray, 366 N.C. at 10, 727 S.E. 2d at 682 (quoting Ferrell, 334 N.C. at 659, 435 S.E. 2d at 315). However, 'it is logical to conclude that an amendment to an unambiguous statute indicates the intent to change the law.' Childers v. Parker's, Inc., 274 N.C. 256, 260, 162 S.E. 2d 481, 484 (1968)."

Bryant v. United States, 768 F. 3d 1378, 1385 (11th Cir. 2014).

Comparing the original and amended statutes, I initially note that the amendment to § 40-26-1 added "place or space … provided for R.V.s" immediately before the language "or any other place in which rooms, lodgings, or accommodations are regularly furnished to transients for consideration…". (emphasis added). A plain reading of the amended statute indicates that the legislature deemed the provision of a space for R.V.s as one of the places "in which rooms, lodgings, or accommodations are regularly furnished". I also note that a "place or space provided for …a R.V." is included in the list of things that were previously enumerated to furnish "rooms, lodgings, or accommodations" to transients. "The *ejusdem generis* rule of statutory construction provides that when general words or phrases follow or precede a specific list of classes of persons or things, the general word or phrase is interpreted to be of the same nature or class as those named in the specific list." Cocking v. City of Montgomery, 48 So. 3d 647, 650 (Ala. Civ. App. 2010). Considering that principle, I conclude that a "place or space provided for … an RV" was stated as a specific type of place that generally provided "rooms, lodgings, or accommodations" like the other specific things in the list.

Additionally, I note that Act 2019-387 added a subsection to § 40-26-1 that exempted spaces provided for R.V.s, among other things, that are supplied for a

period of 90 continuous days. Indeed, the purpose of the bill from which the Act (2019-387) amending § 40-26-1 originated was stated as: "to exclude from the tax … places or spaces in parks for recreational vehicles." That pronouncement of purpose implies that "places or spaces in parks for recreational vehicles" had been previously included in the transient tax.

Finally, the Revenue Department notes that, if the amendment to § 40-26-1 is deemed to expand the tax, it would be in violation Article IV, Section 70, of the Constitution of Alabama of 1901 because the corresponding bill originated in the Senate and not the House of Representatives. "[I]t is the duty of the courts to adopt the construction of a statute to bring it into harmony with the constitution, if its language will permit." House v. Cullman County, 593 So. 2d 69, 71 (Ala. 1992) (quoting Alabama State Federation of Labor v. McAdory, 246 Ala. 1, 10, 18 So. 2d 810, 815 (1944). A construction of the amendment to § 40-26-1 as clarifying that "places or spaces in parks for recreational vehicles" had been previously included in the transient tax is in keeping with this principle.

Based on the foregoing, I conclude that, during the assessment period, i.e., February 1, 2016, through January 31, 2019, § 40-26-1 imposed a tax on the provision of spaces for R.V.s and, therefore, the Taxpayer was subject to the taxes assessed.

Whether the Taxpayer May Tack on "Off Season Storage" Time

to Reach the 180-days Required to be Exempt from the Tax

I next turn to the Taxpayer's argument that certain rental payments should be exempt from taxation. Specifically, the Taxpayer noted that certain customers rent

a space for a R.V. for a period of time during "football season" and rent the same space for a period of time for "Off Season Storage". The Taxpayer asserts that it should be able to combine the days in those agreements and that, if they exceed 180 days, the rental payments should be exempt from taxation. See Ala. Code 1975, § 40-26-1(b)(i).[3] The Revenue Department, however, asserts that the days for "off season storage" do not count toward the 180 days. Because the evidence indicates that the time period of "off season storage" does not confer the right to stay overnight on the R.V. space rented, I conclude that the Taxpayer's argument that the "off season storage" portion of the contract may be tacked onto the "football season" portion of the contract to meet the 180-day threshold for being exempt from the tax imposed by § 40-26-1 is without merit.

Whether the Revenue Department Properly Applied the Negligence Penalty

Finally, I note that the Taxpayer has requested a waiver of the negligence penalty in this case. Because the Taxpayer states that he relied on the previous Administrative Law Opinion, I conclude that the Taxpayer was not negligent in failing to pay the tax imposed by § 40-26-1. Therefore, the negligence penalty assessed by the Revenue Department is overturned.

Conclusion

Based on the foregoing, the final assessment of lodging tax and interest entered by the Revenue Department is upheld in the amount of $143,396.82. Additional interest will accrue from the date of the final assessments until the liability is paid

[3] Before the addition of subsection (d), subsection (b)(i) provided the applicable time period for the tax exemption for all accommodations.

in full.

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

Entered October 4, 2022.

/s/ Leslie H. Pitman
LESLIE H. PITMAN
Associate Tax Tribunal Judge

lhp:ac
cc: John J. Crowley, Jr., Esq.
David E. Avery, III, Esq.