

JOSEPH H. MICELI
9106 VICTORIA CIRCLE
GULFPORT, MS 39503,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 11-541

FINAL ORDER

The Revenue Department assessed Joseph H. Miceli (“Taxpayer”) for use tax for November 2009. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on November 2, 2011. The Taxpayer attended the hearing. Assistant Counsel Duncan Crow represented the Department.

The Taxpayer lives in Gulfport, Mississippi. He purchased a used boat from an individual in Fort Myers, Florida in November 2009. He has maintained or docked the boat at the Wharf Marina in Orange Beach, Alabama since that time. He explained at the November 2 hearing that he takes the boat out on trips once or twice a month, and always returns the boat to the Wharf Marina in Alabama.

The Taxpayer registered the boat with the U.S. Coast Guard and the State of Mississippi. He did not register the boat in Alabama because Alabama does not require the registration of boats in Alabama if they are registered in another State.

The Department assessed the Taxpayer for Alabama use tax on the boat for November 2009, the month the Taxpayer moved the boat to Alabama. The Taxpayer disputes the assessment, arguing that the intent of the Alabama use tax was to tax Alabama residents, not out-of-state residents that own and use property in Alabama.

Alabama levies a sales tax on the sale of tangible personal property at retail, Code of Ala. 1975, §40-23-1, et seq., and also a complimentary use tax on property purchased at retail that is subsequently used, stored, or consumed in Alabama. Code of Ala. 1975, §40-23-50, et seq.

The State also levies “casual” sales and use taxes that apply to motor vehicles, boats, etc. that are required to be registered with a judge of probate in Alabama. Code of Ala. 1975, §§40-23-101 (sales tax) and 40-23-102 (use tax). Those casual taxes apply when a purchaser buys at retail a motor vehicle, boat, etc. at retail from an individual or entity not in the business of selling such items at retail.

The casual use tax levied at §40-23-102 applies in this case because the Taxpayer purchased the subject boat at retail in Florida from a person not licensed as an Alabama retailer, and subsequently used and stored the boat in Orange Beach, Alabama. The Taxpayer would have been allowed a credit against the Alabama tax due if he had paid sales or use tax to another state. Code of Ala. 1975, §40-23-106. It is undisputed, however, that the Taxpayer did not pay sales or use tax on the boat to Florida, Mississippi, or any other State.

The Alabama use tax is on every person using, storing, or consuming tangible personal property in Alabama, regardless of where the individual resides. The taxable event is the use, storage, or consumption of property in Alabama. See generally, *State v. Toolen*, 167 So.2d 546 (Ala. 1964). The Taxpayer admittedly used and stored his boat in Alabama, and thus had sufficient contact or nexus with Alabama to subject him to Alabama taxation.

The final assessment is affirmed. Judgment is entered against the Taxpayer for use tax and interest of \$4,978.39. Additional interest is also due from the date the final assessment was entered, July 7, 2011.

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

Entered November 22, 2011.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Duncan R. Crow, Esq.
Joseph H. Miceli
Joe Walls
Mike Emfinger