STATE OF ALABAMA,	§	STATE OF ALABAMA
V.	§	DEPARTMENT OF REVENUE
SOUTHEASTERN RENT-A-CAR, INC. d/b/a General Leasing 1508 4th Avenue South Birmingham, AL 35233,	§	ADMINISTRATIVE LAW DIVISION
	§	DOCKET NO. S.85-108
Taxpayer.	§	

ORDER

This case involves a disputed preliminary assessment of sales tax entered by the Revenue Department against the Taxpayer concerning the period January 1, 1982 through June 30, 1984. A hearing was conducted by the Administrative Law Division on May 22, 1985. The parties were represented at said hearing by attorneys William R. Lewis and Mark Griffin, for the Taxpayer and the Revenue Department, respectively. Based on the evidence presented by the parties, the following, findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The Taxpayer is in the business of leasing automobiles. The automobiles used by the Taxpayer in its leasing operation are purchased by the Taxpayer at wholesale. The Taxpayer also sells at retail some of its automobiles that were previously used as lease cars. The issue in this case is whether the Taxpayer is liable for sales tax on said retail sales.

The Taxpayer began operations in 1978. There is evidence to indicate that the Taxpayer obtained an Alabama sales tax license in 1980. ln 1983, the Taxpayer was issued an automobile dealers

license and a designated agents license. In June, 1983, the Taxpayer also obtained a new business license to operate in Jefferson County.

The Revenue Department audited the Taxpayer for the period in issue and determined that sales tax was due on all retail sales made by the Taxpayer during said period. The Department's position is based on Code of Alabama 1975, §40-12-224, which reads in pertinent part as follows:

> provided further, that a sale of tangible personal property previously purchased at wholesale for the purpose of leasing or renting under a transaction subject to the privilege or license tax Ievied in this article should be deemed to be a "retail sale" or a "sale at retail" for the purpose of administering article I of chapter 23 of this title . . . .

The Taxpayer argues that Code of Alabama 1975, §40-23-101, commonly referred to as the casual sales tax law, is applicable, and that under that law the seller isn't required to collect sales tax. Instead, the Taxpayer contends that the casual sales tax law requires the purchaser of a vehicle to pay the tax to the county tax collector or director of revenue. There is evidence to indicate that some of the purchasers in question did in fact pay sales tax to the Jefferson County Director of Revenue prior to obtaining a title for their vehicle. The Revenue Department disputes that the casual sales tax law is applicable to the Taxpayer and argues that the Taxpayer was liable to collect the sales tax in issue.

CONCLUSIONS OF LAW

Under §40-12-224, the Taxpayer is allowed to purchase at wholesale the automobiles that it uses in its leasing operation. However, that portion of §40-12-224 quoted above clearly provides that the subsequent sale of any lease car is a taxable retail sale. Applying that section to the case at hand, it is clear that the sales in issue were taxable retail sales.

The Taxpayer's argument is that the casual sales tax law was applicable during the assessment period and relieved the Taxpayer from the responsibility and liability of collecting sales tax. Thus, the initial question is whether the casual sales tax law is applicable in the present case.

Code of Alabama, §40-23-101 levies a sales tax on the sale of certain automobile vehicles, etc. , which are purchased "from any person, firm, or corporation which is not a licensed dealer engaged in the selling. . . . " In the present case, the determinative question is whether the Taxpayer is a licensed dealer within the scope of the above section.

The Taxpayer argues that the term "licensed dealer" used in §40-23-101 refers to an automobile dealers license or a license to do business. Thus, the Taxpayer contends that because it did not obtain either of said licenses until 1983, it was not a licensed dealer, and consequently, that the casual sales tax law should apply, thereby relieving it of liability.

The Department argues that the term "licensed dealer" makes reference to the Alabama sales tax license, and that because the Taxpayer had a sales tax license during the entire audit period, it was a licensed dealer so as to make the casual sales tax law inapplicable.

After a review of the scope of §40-23-101, it is hereby determined that the phrase "licensed dealers" as used therein refers to dealers that are licensed to sell at retail under the Alabama sales tax law. Accordingly, the casual sales tax law was not applicable to the transactions in issue so as to relieve the Taxpayer from the liability of collecting the sales tax due thereon.

The clear intent of §40-23-101 is to impose a sales tax on incidental retail sales that were previously not subject to the sales tax law, i.e., casual sales by sellers without a sales tax license. The law was not intended to apply to dealers with existing sales tax licenses, such as the Taxpayer, which were already liable to collect the sales tax.

At the hearing, the Taxpayer presented evidence indicating that sales tax had been paid by its customers to the Jefferson County Director of Revenue on four of the sales included as part of the assessment. Those sales were to Collateral Investment Company, A. C. Legg Packing Company, Angel Distributing Company and E. Allen Burks. The Department agrees that the assessment should be reduced

to allow for any tax that the Taxpayer can establish has been paid.

Based on the above, it is hereby determined that the Taxpayer is liable for sales tax on all retail sales made during the period covered by the assessment. The Department is to recompute the assessment so as to give allowance for the tax paid by the four purchasers listed herein. Thereafter, the assessment should be made final as recomputed.

Done this 5th day of September, 1985.

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BILL THOMPSON
Chief Administrative Law Judge