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REVENUE DISCOVERY SYSTEMS – ADMINISTRATIVE LAW DIVISION

MARLIN LEASING CORP.,	)	
	)	
Petitioners,	)	
	)	
v.	)	
	)	**RDS PID No. 10932**
ALEXANDER CITY, AL,	)	
CITY OF ATHENS, AL, *et al*	)	
	)	
Respondents,	)	

FINAL ORDER

The taxpayer, Marlin Leasing Corporation, a New Jersey corporation based in Mount Laurel, is an equipment leasing and financing company providing leases and financing options to businesses in Alabama. It offers financing and rental options for new and used equipment in markets such as copying, food service, graphic arts, telecom, medical, and computer hardware and software. The taxpayer operates as a subsidiary of Marlin Business Services, Inc., and elected to cease further business operations in Alabama as of January of 2010. However, all existing leases in the state at that time are being allowed to run to completion. The taxpayer maintains no office or location in Alabama, and maintains that it does not solicit end use customers within the State for financing or leases, but rather that they are only referred to end users of their products and services.

The taxpayer was audited by Revenue Discovery Systems (RDS) on behalf of self-administered county and municipal taxing authorities throughout the State of Alabama. The audit revealed that the taxpayer was actively leasing equipment within municipalities in Alabama. The RDS auditor determined that the taxpayer was properly remitting local rental tax on leases and sales/use tax on conditional sales contracts, but that it failed to comply with municipal business license requirements in those jurisdictions wherein it was leasing tangible personal property. RDS assessed the taxpayer for business license fees in all jurisdictions in which the taxpayer had active leases of property. The taxpayer timely appealed the resulting final assessments in accordance with ALA. CODE § 11-51-191(e)(1) (1975), and a hearing was conducted on February 12, 2014. The taxpayer was represented by in-house counsel in the appeal.

Analysis

The only issue on appeal is whether the taxpayer is "doing business" within the municipalities in question through its activity of leasing tangible personal property to customers within the respective jurisdictions, so as to subject it to the municipalities' exaction of license taxes for the privilege of conducting business therein.

The taxpayer argues on appeal that its activities in Alabama related to the financing of equipment for businesses, which are procured through contracts consummated in Pennsylvania, are an interstate activity and do not constitute doing intrastate business in Alabama subject to municipal business license taxes. The taxpayer cites to the Fifth Circuit Court of Appeals case of *Lee v. Northern Nekoosa Corp.*, 465 F.2d 1132, 1135 (5th Cir. 1972), originating in the U.S. District Court for the Middle District of Alabama, for the premise that "the making of such contracts outside the State does not constitute doing business in the State." The taxpayer further supports its argument by citing *Wise v. Grumman Credit Corp.*, 603 So.2d 952 (Ala. 1992), which held that the financing and shipping of a plane into Alabama, absent any other activity in the state amounting to a continuing presence over and above the mere shipping of commodities in interstate commerce, does not constitute "doing business" in Alabama.

In arguing these premises, the taxpayer fails to acknowledge that the business license taxes being assessed, as well as the conclusion that it's doing business in Alabama, are not based upon the financing activities of the company. Rather, they're based upon the leasing of tangible personal property within the respective municipalities. The *Grumman* case is distinguishable from the present facts in that Grumman Credit was not involved in the performance of any type of service, labor, or other activity within the state that could reasonably be argued to be incidental to their interstate sale and financing of the plane in question. *Wise v. Grumman Credit Corp.*, 603 So. 2d at 953. Furthermore, while the taxpayer correctly states a rule from *Lee v. Northern Nekoosa Corp*. that the mere making of contracts outside of Alabama with Alabama residents does not constitute doing business therein, it fails to emphasize the following sentence in that case, the very next on page 1135, which provides that "[i]f the contract is to be performed in the State of Alabama, it is its *performance* which would amount to doing business in Alabama." 465 F.2d at 1135.

All municipal business license taxes in Alabama are governed under the Municipal Business License Reform Act of 2006, Act No. 2006-586, Ala. Acts 2006 ("MBLRA). The MBLRA grants all municipalities the authority "[t]o license any exhibition, trade, business, vocation, occupation, or profession not prohibited by the Constitution or laws of the state which may be in engaged in or carried on in the municipality." ALA. CODE § 11-51-90(a)(1). The term "business" is defined by the MBLRA as "[a]ny commercial or industrial activity or any enterprise, trade, profession, occupation, or livelihood, including the lease or rental of residential or nonresidential real estate, whether or not carried on for gain or profit, and whether or not engaged in as a principal or as an independent contractor, which is engaged in, or caused to be engaged in, within a municipality." ALA. CODE § 11-51-90.1(1).

Whether a taxpayer is "doing business" in local jurisdictions in Alabama is a practical question of whether it is exercising or engaging in any of the functions, powers, or primary

business activities for which it was created within a jurisdiction's boundaries. *State v. Anniston Rolling Mills*, 27 So. 921 (Ala. 1900); *J.R. Watkins Co. v. Hamilton*, 26 So.2d 207, 210 (Ala. 1946).

The taxpayer in this instance is engaged in the business of leasing tangible personal property within Alabama municipalities. The evidence is undisputed that the taxpayer was engaged in that business in Alabama during the subject years, confirmed by the fact that the taxpayer reported and remitted rental tax to local jurisdictions wherein it rented property. Having property located in Alabama municipalities and deriving income from the leasing of that property therein, clearly an activity and function for which the company, Marlin Leasing Corporation, was created, the taxpayer was doing business within Alabama municipalities.

In *Boswell v. Paramount Television Sales, Inc.*, 282 So.2d 892 (Ala. 1973), the Alabama Department of Revenue levied a license/privilege tax against Paramount, a California taxpayer, based upon its rental or leasing of videotapes to Alabama television stations. Paramount shipped the films to the local stations in Alabama, and the stations returned the films to Paramount within forty-eight hours after the scheduled broadcast date. The property was utilized strictly within Alabama and then shipped back to Paramount in California. Paramount had no office, place of business, or representatives in Alabama, and had not qualified with the Secretary of State to do business in Alabama. The Alabama Supreme Court recognized that a state could not tax the privilege of carrying on interstate commerce, but held that a state has the power to place a levy on an activity that occurred within the state either before or after the movement of the property in interstate commerce. The court determined that transferring possession of the films to the local stations and renting them for use by the stations constituted a local act that amounted to a taxable event occurring wholly within the forum. *Id.* at 896. Thus, *Paramount* holds that ownership and physical presence of income-producing tangible personal property within a taxing jurisdiction establishes the requisite nexus for the exaction of license and privilege taxes thereon.

The Alabama Department of Revenue's Administrative Law Division ("ALD") has also upheld this standard in *Dial Bank v. State Dep't of Revenue*, Admin. Law Div., Dkt. No. Inc. 95-289 (August 10, 1998), when it ruled that the presence of income-producing MRI machines leased from the taxpayer established nexus in the taxing jurisdiction sufficient to subject the taxpayer to rental tax and collection of sales and use taxes. *see also Graduate Supply House Inc. v. State Dep't of Revenue*, Admin. Law Div., Dkt. No. S. 05-751 (November 20, 2007) at 9 (Mississippi taxpayer had rental tax nexus with Alabama because it owned caps and gowns that were being rented in Alabama during the subject periods.); *Lasalle Chicago Leasing Corp. v. State Dep't of Revenue*, Admin. Law Div., Dkt. No. F. 95-441 (March 18, 1996) (The leasing of tangible personal property in Alabama constitutes "doing business" within the State).

Based upon the foregoing, the taxpayer was clearly doing business within the respective municipalities wherein it derived income from the leasing of tangible personal property. Alabama law permits the exaction of municipal license taxes for such activities pursuant to the MBLRA. Accordingly, the final assessments entered against the taxpayer are due to be upheld. Judgment is entered against the taxpayer for license tax, penalty and interest in the amount of $3,392.50, with additional interest accrued thereon until payment is made.

This Final Order may be appealed to the circuit court within 30 days pursuant to ALA. CODE § 40-2A-9(g). Alternatively, the taxpayer may file an application for rehearing with the RDS administrative law division within 15 days pursuant to ALA. CODE § 40-2A-9(f).

Entered June 27, 2014

/s/ Jonathan V. Gerth
Jonathan V. Gerth, Esq.
Administrative Law Judge