THE ADMINISTRATIVE HEARING OFFICER OF REVENUE DISCOVERY SYSTEMS

NISSAN-INFINITY LT,	)	
	)	
Taxpayer,	)	
	)	
vs.	)	
	)	**Dkt. No.: RDS 21111**
CITY OF ADAMSVILLE, ALABAMA, et al, and REVENUE DISCOVERY SYSTEMS.	)	
	)	
	)	
Respondents,	)	

FINAL ORDER

The Taxpayer, Nissan-Infinity LT, is a Delaware statutory trust that is commercially domiciled outside of the State of Alabama. The Taxpayer was the subject of an appeal of municipal license tax final assessments which was heard on March 11, 2015 and preliminarily ruled upon May 6, 2015. The content and conclusions of the Preliminary Order are incorporated into this Final Order by reference.

Pursuant to the Preliminary Order, the Taxpayer was requested to provide further information in support of its request for an apportionment of gross receipts on long-term leases of automobiles to lessees domiciled in Alabama local taxing jurisdictions. Specifically, the Taxpayer was requested to provide feasible circumstances whereby other taxing authorities could *constitutionally* tax the gross receipts from those leases pursuant to an *equal and upstanding right* so that, without the protection of the Commerce Clause, those leases would bear cumulative burdens not imposed on local commerce. Western Live Stock v. Bureau of Revenue, 303 U.S. 250, 255-256 (1938). The Taxpayer aptly and correctly states in its response that the "Supreme Court has "categorically rejected" the necessity of a showing that any other state has actually

imposed a license tax on gross receipts," M & Assoc's, Inc. v. City of Irondale, 723 So. 2d 592, 598 (Ala. 1998), however, the Taxpayer must still either sustain that other taxing jurisdictions have an equal right to license or tax the same gross receipts from the leases or show by "clear and cogent" evidence that the values taxed by the local jurisdictions are out of all appropriate proportion to the business transacted therein to be successful on a challenge of fair apportionment. Container Corp. of America v. Franchise Tax Bd., 463 U.S. 159, 169-170 (1983).

In its response, the Taxpayer has raised two arguments that the leasing activities of the Taxpayer could be taxed by other jurisdictions. First, that the local jurisdiction in which the Taxpayer is located outside of Alabama has jurisdiction to tax its gross receipts earned in Alabama. This argument is unsustainable as such a tax would not be levied under an "equal and upstanding" right with the local jurisdictions in Alabama where the leased property is domiciled, and such a tax would not be able to withstand Constitutional scrutiny under the same rationale and principles set forth in M & Assoc's, Inc. v. City of Irondale, supra.

Second, the Taxpayer has cited a recently released opinion from the Alabama Tax Tribunal, U.S. Xpress Leasing, Inc. v. State Dep't of Revenue, Ala. Tax. Trib., Dkt. Nos. S. 14-1013-1017 (June 17, 2015), which it argues supports that the jurisdictions where the lease agreements were executed, i.e. where the dealerships are located, would have jurisdiction to license or tax the rentals pursuant to the Chief Judge's statement that a "lease transaction occurs or is closed where the lessor transfers physical possession of the leased property to the lessee." Id. at 8. Respectfully, I do not agree that this argument is consistent with the context of that opinion or the issues relevant to the Taxpayer's long-term leases. The crux of the issue is where the lessor is deemed to have transferred possession to the lessee, which Alabama and other state precedent supports, at least for purposes of long-term leases, is where the property or lessee, or

both, are situated or domiciled. In other words, the taxable incident of a lease is not the isolated act of entering into the transaction or executing the lease agreement, but is the act by the lessor of exercising the privilege of sending its property into a taxing jurisdiction and collecting monthly rentals for use of the property situated within the taxing jurisdiction by its domiciliaries.

In U.S. Xpress, the Alabama Tax Tribunal held that a lease agreement executed between a related Tennessee-based lessor and lessee in Chattanooga was a taxable event that occurred outside of Alabama, and although the property passed through Alabama in interstate commerce, that did not subject U.S. Xpress to rental tax in Alabama. Id. at 1-2. Accordingly, the taxpayer was not "doing business" in Alabama. The decision references and is directly harmonious with the Alabama Department of Revenue's rental tax regulations, which provide in pertinent part:

> (10) Where a lessor leases or rents a truck, truck trailer, or semitrailer to a motor carrier in this state, the total gross receipts from the rental of the truck, truck trailer, or semitrailer would be subject to the tax, although the truck, truck trailer, or semitrailer may occasionally travel in interstate commerce in other states. Where the lessor leases a truck, truck trailer, or semitrailer to a motor carrier outside this state, the receipts therefrom would not be subject to the tax although the truck, truck trailer, or semitrailer may occasionally travel in this state in interstate commerce.

ALA. ADMIN. CODE r. 810-6-5-.09(10) (1982).

Because U.S. Xpress's lessee was not located in Alabama, the transactions were not subject to rental tax in Alabama. Had the lessee been in Alabama, the very same regulation would have clearly made the total gross proceeds from the transactions subject to Alabama rental tax, and the taxpayer would likely have been thus "doing business" in Alabama. See also ALA. ADMIN. CODE r. 810-6-5-.09(8) ("When a lessor (i) is located outside Alabama, (ii) leases tangible personal property to a lessee within Alabama and (iii) the leased property is used in Alabama; the total gross proceeds from the lease of tangible personal property in this state are

subject to rental tax").

These regulations, as cited in the Preliminary Order of this case, are consistent with the longstanding precedent of the Supreme Court of Alabama which stated that:

> The rental of property *within the state*, so far as the same involves the lessor as well as the lessee, is an event which transpires within the state, and is therefore a local activity, subject to state taxation. This is true whether the contract for the rental of property within the state is made by means of interstate commerce *or is signed or executed wholly outside of the state*. If the contract or rental provides for the renting of property *actually situated* within the state, the renting becomes a local event subject to state taxation, irrespective of the fact that the property to be rented is brought into the state in interstate commerce or is thereafter to be shipped out of the state in interstate commerce.

Paramount-Richards Theatres v. State, 55 So. 2d 812, 822 (Ala. 1951) (emphasis added).

The Alabama rental tax statute levies "a privilege or license tax on each person engaging or continuing *within this state* in the business of leasing or renting tangible personal property." ALA. CODE § 40-12-222(a). The phrase "in this state" has been construed to mandate the "physical presence of the property within the state at the time of relevant utilization," Boyd Bros. Transp., Inc. v. State Dep't of Revenue, 976 So. 2d 471, 478 (Ala. Civ. App. 2007), and it has been held that the situs of a lease for the purposes of taxation is the physical location of the property, not where the taxpayer made decisions concerning the property. In re Culverhouse, 358 B.R. at 812.

Although Alabama tax law and precedent speak generally to leasing activities, there are no Alabama appellate cases on record that specifically address the tax treatment of long-term leases of mobile property or vehicles, particularly on the local tax level. When Alabama appellate courts have not been called upon previously to decide an issue, they will look to the law of other states for guidance. State Dep't of Revenue v. Kelly's Food Concepts of Ala., LLP,

157 So. 3d 944, 949-950 (Ala. Civ. App. 2014).

The Supreme Court of Louisiana has upheld state and local taxation on proceeds from lease agreements signed outside of the state when the leased property was used inside the State by local residents. Lafayette Parish School Bd. v. Market Leasing Co., Inc., 440 So. 2d 81 (La. 1983). In analyzing the taxability of long-term vehicle leases, the Court concluded that the "act of leasing" is not isolated to the signing of the lease agreement, but also includes the sending of one's property into a taxing jurisdiction, the transfer of possession to lessee in that jurisdiction, and the collecting of monthly rent thereon. Id. at 86. It further held that "[t]he act of leasing includes the possession by the lessee, and continued contact between lessor and lessee to ensure that the automobile is "properly maintained and protected against waste; that it is kept in an acceptable state of repair; that it is covered by insurance sufficient to protect the interest of the owner; ... that the rents ... are paid by the lessee as they periodically accrue under the terms of the lease." Id. Moreover, although Market Leasing had no office, salespersons, or agents within the taxing jurisdiction, it had sufficient constitutional nexus in the locality through the ownership of personal property therein and its having availed itself of "all the protections and privileges accorded ... domiciliaries – police and fire protection, access to ... courts, etc." to protect its property interests. Id.

Similar to the Chief Judge's ruling in U.S. Xpress Leasing, supra, the Louisiana Supreme Court specified that it was the "transfer of possession" for a consideration that was taxable by the state and local government pursuant to a lease. Id. However, the court further clarified that "[t]o avoid multiple taxation, it is necessary to identify one situs for the act of leasing. The "act of leasing" takes place where the vehicle is kept; that is, where the lessee can be located if lease payments are missed or the leased property is damaged." Id. In sum, by engaging in a business

that allows its property to be transported into other jurisdictions, and by availing itself of the services provided by those jurisdictions, a taxpayer subjects itself to their taxing authority. Id. at 87.

Florida courts have similarly held that the taxable event of rentals cannot be limited to the culmination of a lease agreement, but rather extends to that of transferring possession of the leased property to a lessee where it is being used or domiciled in exchange for monthly rent. Kirk v. Western Contracting Corp., 216 So. 2d 503, 507 (Fla. 1st Dist. Ct. App. 1968). At issue in Western Contracting was the use in Florida of two dredges by a non-resident lessee who had entered into a lease outside of the state with an out-of-state lessor more that ninety days before the property entered Florida for use therein. Id. at 507. The court held that "the privilege of conducting such business by both the leasing corporation and the [lessee] was a privilege being exercised in [Florida] so long as rental was being paid on the dredges working [in Florida]." Id. The court averred that the rental business being engaged in by the lessor did not consist exclusively in the act of executing a lease out-of-state, but also included maintaining sufficient contacts with the lessee to protect its property interests and secure remuneration for its use in Florida as it periodically accrued. Id. In sum, the court ruled that any person engaging in the business of renting tangible personal property which is located in the State of Florida is exercising a taxable privilege so long as the property is situate(d) within the confines of the state; thus holding that the transfer of possession to a lessee occurs where the property is situated or domiciled for use during the rental term by the lessee. Id. at 508 (also noting that "it is wholly immaterial where the lease of the property is executed or the rental agreement is entered into between the parties, or at what point of time such agreements are reached in relation to the property).

Based upon the foregoing, and in accordance with Alabama law, no other jurisdiction within or without Alabama would have an equal and upstanding right to tax the gross receipts from leases of tangible personal property situated or domiciled with lessees for use in local Alabama jurisdictions. To wit, no other locality could claim the combination of a lessee's domicile and the location where the leased property is domiciled, in which case Alabama tax regulations provide that, even when the lessee is located outside the state, the entire gross proceeds from the transaction are subject to tax. ALA. ADMIN. CODE r. 810-6-5-.09(8). The fact that the property leased may occasionally be used to travel in interstate commerce is of no consequence, and does not diminish the local character of the lease transaction. Oxford v. Blankenship, 127 S.E.2d 706, 707-708 (Ga. Ct. App. 1962). Moreover, the Taxpayer stated in its appeal that it only purchases leases from dealers after the agreements have been executed and the property has already been transferred into the local taxing jurisdictions in Alabama which now assert a license tax for the privilege of leasing property therein. Thus, any argument by the taxpayer that the jurisdictions where the leases are executed and the lessees take initial possession of the vehicles, albeit en route to the "garaged" address or domicile, falls apart.

It is hereby determined that the gross receipts subject to local license taxes in Alabama localities are properly measured by the rent paid to the Taxpayer from the leases of property situated or "garaged" within the local municipal boundaries. The amount of rent paid by the lessees represents a proper value for the licensing of the leases, and does not result in a constitutionally offensive taxing scheme that would subject the Taxpayer to multiple taxation on the same receipts. The final assessments are thus upheld and affirmed based upon the rationale stated in the Preliminary Order and herein. The total amount immediately due upon issuance of this Order is $49,340.20, representing $39,399.89 in license tax, and interest of $17,941.20.

This Final Order may be appealed to the Circuit Courts of the counties having jurisdiction over the municipalities within thirty (30) days from the date of entry pursuant to ALA. CODE § 11-51-191(f).

DONE and ORDERED this 28th day of August, 2015.

Jonathan V. Gerth, Esq.

Administrative Hearing Officer for RDS