

STATE OF FLORIDA
DIVISION OF ADMINISTRATIVE HEARINGS

EAGLE AIRCRAFT CORP. and)
CENTURION AVIATION COMPANY,)
)
Petitioners,)
)
vs.) Case No. 97-2905
)
DEPARTMENT OF REVENUE,)
)
Respondent.)
_____)

RECOMMENDED ORDER

Pursuant to notice, a formal hearing was conducted in this case on April 21, 1998, in Tallahassee, Florida, by Don W. Davis, an Administrative Law Judge for the Division of Administrative Hearings.

APPEARANCES

For Petitioners: J. B. Curasi, Esquire
Eagle Aircraft Corp. and
Centurion Aviation Company
3240 Capital Circle Southwest
Tallahassee, Florida 32310

For Respondent: Jeffrey M. Dikman, Esquire
Department of Legal Affairs
Tax Section
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

STATEMENT OF THE ISSUE

Whether Petitioners should be permitted to purchase an aircraft for leasing purposes without paying sales tax.

PRELIMINARY STATEMENT

By letter dated April 18, 1997, Respondent's representative notified Petitioner Centurion Aviation Company (Centurion) that its request for sales tax exemption with regard to purchase of an aircraft was denied.

By Petition For Formal Proceedings filed June 16, 1997, Centurion and Eagle Aircraft Corp., (Eagle), jointly challenged Respondent's assessment of sales/use taxes against Centurion.

The matter was transferred to the Division of Administrative Hearings for formal proceedings on June 20, 1997. By order of Administrative Law Judge Donald R. Alexander, Respondent's motion to abate the scheduling of a final hearing was granted pending a status report to be filed on or before December 26, 1997. Upon conclusion of the abatement period, Judge Alexander set the matter for final hearing on April 21, 1998.

The case was transferred to the undersigned for purpose of conducting the final hearing. At the final hearing, Respondent presented testimony of one witnesses, and offered two exhibits in evidence. Petitioners presented testimony of one witness and one exhibit.

The parties were granted leave to file proposed recommended orders more than ten days following the filing of the transcript. That transcript was filed on May 6, 1998. Proposed recommended orders submitted by the parties have been reviewed in the course of preparation of this Recommended Order.

FINDINGS OF FACT

1. Centurion, as a legal entity, was first incorporated under the laws of the State of Florida on or about May 23, 1996. Eagle, the parent corporation of Centurion, is a separate legal entity, also incorporated under the laws of the State of Florida. Both entities have their headquarters in Tallahassee, Florida.

2. An assessment of sales/use taxes, and associated interest, was issued by Respondent against Centurion and reflected in a Notice of Reconsideration (NOR), dated April 18, 1997.

3. No tax assessment has been issued against Eagle.

4. The assessment was based upon the purchase by Centurion, of a 1968 Cessna Aircraft, Model #210H, Serial #21059002, in Florida, from Frank A. Tillman, for \$30,000.

5. Centurion, the sole purchaser, took title to the aircraft when it was purchased from Frank Tillman. No sales tax was collected on the transaction. However, tax was remitted by Eagle on the subsequent re-leasing of the aircraft in Florida.

6. At the time of the sale, Centurion, the purchaser, was not registered as a dealer. However, Eagle, the parent corporation, was registered as a dealer.

7. Evidence is in conflict concerning the exact date of purchase of the aircraft,¹ but the parties are in agreement and the evidence supports the finding that the aircraft was purchased

before Centurion obtained a dealership registration on October 24, 1996.

8. Centurion did not seek to register as a dealer until Respondent later launched inquiries about the purchase.

9. On August 21, 1996, Respondent issued a tax assessment/billing against Centurion based upon an estimated aircraft purchase price of \$60,000. However, based upon additional information provided by Eagle, Respondent learned that the purchase price was only \$30,000 and the assessment was reduced. Respondent's NOR reflects the computation of the assessment based upon the purchase price of \$30,000.

10. Petitioners did not act as a "joint venture" or "unit" in that they did not register jointly as a "dealer" at the time of purchase; they did not acquire joint title to the aircraft; and they did not jointly issue a certificate of resale at the time of purchase.

11. The following elements of joint venture were not evidenced by Petitioners at the time of sale: (1) a community of interest in the performance of the common purpose; (2) joint control or right of control; (3) a joint proprietary interest in the subject matter; (4) a right to share in the profits and (5) a duty to share in any losses which may be sustained.

12. Testimony by James B. Curasi on behalf of Petitioners that a joint venture was established contradicts statements made by him previously to Respondent. In a letter dated September 19,

1996, Petitioners' representative and witness, James B. Curasi, informed the Department of Revenue that the aircraft was leased by Centurion to Eagle Aircraft. He stated that the relationship between Eagle and Centurion was that of lessor and lessee, rather than that of joint venture partners. Specifically, Curasi stated the following in the letter:

Please be advised that this aircraft was purchased by Centurion Aviation Company, a related company, and leased to Eagle Aircraft. (emphasis supplied.)

Testimony by Curasi to the contrary is not credited.

13. Additionally, a blanket certificate of resale, presented to Respondent after this formal administrative proceeding commenced, is signed only in the name of Eagle Aircraft as "purchaser," and states that "all material, merchandise, or goods purchased by the undersigned from Frank Tillman" shall be for exempt resale purposes.

CONCLUSIONS OF LAW

14. The Division of Administrative Hearings has jurisdiction over the parties and the subject matter. Section 120.57(1), Florida Statutes.

15. The gravamen of Petitioners' protest is that the issuance of a certificate of resale by Eagle, a registered dealer at the time of sale, to the seller of the aircraft, was sufficient to exempt the sale from taxation, even though Centurion, the purchaser, was not registered as a dealer at the

time of sale. Additionally, neither Centurion nor Eagle were registered as a dealer as part of a joint venture "at the time of sale." Rather, Eagle was registered in its own name alone.

16. Petitioners' argument is not persuasive. By registering one corporation as a dealer (i.e., "Eagle"), then taking title of the aircraft in the name of a different corporation (i.e., "Centurion"), Petitioners did not act as a "unit" or "joint venture," in the ways that are material to obtaining a resale exemption.

17. Under Florida Administrative Code Rule 12A-1.038(4) and (5)(a), only a dealer who is the "purchaser" of tangible personal property may issue a valid certificate of resale. Regardless of whether a "joint venture" existed, neither Eagle nor a "joint venture" were the "purchaser" of the aircraft. Rather, the aircraft was acquired in the name of Centurion alone, which was not a registered dealer at the time of sale.

18. A taxpayer's burden of proof, in a tax exemption dispute, includes a burden to show clear entitlement to the exemption. Anderson v. State Department of Revenue, 403 So. 2d 397 (Fla. 1981).

19. In the case of the resale exemption, partial or even substantial compliance with tax exemption requirements is insufficient. A taxpayer must demonstrate strict compliance. See, Section 212.07(1)(b), Florida Statutes and Anderson, id.

20. Section 212.07(1)(b), Florida Statutes, specifically provides:

(b) A resale must be in strict compliance with the rules and regulations, and any dealer who makes a sale for resale which is not in strict compliance with the rules and regulations shall himself or herself be liable for and pay the tax. A dealer may, through the informal protest provided for in s. 213.21 and the rules of the Department of Revenue, provide the department with evidence of the exempt status of a sale. The Department of Revenue shall adopt rules which provide that valid resale certificates and consumer certificates of exemption executed by those dealers or exempt entities which were registered with the department at the time of sale shall be accepted by the department when submitted during the protest period but may not be accepted in any proceeding under chapter 120 or any circuit court action instituted under chapter 72.
(Emphasis supplied).

21. The evidence shows that Centurion purchased the aircraft, not Eagle and not a "joint venture." Under Florida Administrative Code Rule 12A-1.038(4) and (5)(a), the "purchaser" must be a registered dealer at the time of sale and the "purchaser" must issue a certificate of resale. This was not done in the case at hand.

22. Additionally, contrary to Petitioners' assertions, imposing a tax on the purchase or sale of tangible personal property does not result in "pyramiding" or double taxation merely because tax is collected and remitted on the subsequent rental of the aircraft. The sale or purchase of an aircraft is a

separate taxable event from the leasing of the aircraft. Ryder Truck Rental v. Bryant, 170 So. 2d 822, 825 (Fla. 1964).

23. While registered "dealers" are permitted by law to purchase tangible personal property for resale purposes without paying tax on the purchase, requirements for obtaining the resale exemption must be strictly met. Those strict requirements were simply not met in this case.

RECOMMENDATION

Based upon the findings of fact and the conclusions of law, reached, it is, recommended that a final order be entered sustaining Respondent's assessment.

DONE AND ENTERED this 16th day of June, 1998, in Tallahassee, Leon County, Florida.

DON W. DAVIS
Administrative Law Judge
Division of Administrative Hearings
The DeSoto Building
1230 Apalachee Parkway
Tallahassee, Florida 32399-3060
(850) 488-9675 SUNCOM 278-9675
Fax Filing (850) 921-6847

Filed with the Clerk of the
Division of Administrative Hearings
this 16th day of June, 1998.

ENDNOTE

^{1/} The copy of the cancelled check for the purchase price reflected a May 22, 1996, purchase date and the bill of sale bore a May 23, 1996, purchase date. Furthermore, the Petitioner admitted, in response to requests for admission, that the bill of sale was signed on or about May 23, 1996. On the other hand, the

NOR referenced a July 16, 1996, purchase date, as did the Department's witness.

COPIES FURNISHED:

J.B. Curasi, Esquire
Eagle Aircraft Corp.
and Centurion Aviation Company
3240 Capital Circle Southwest
Tallahassee, Florida 32310

Jeffrey M. Dikman, Esquire
Department of Legal Affairs
Tax Section
The Capitol, Plaza Level 01
Tallahassee, Florida 32399-1050

Linda Lettera, Esquire
Department of Revenue
204 Carlton Building
Tallahassee, Florida 32399-0100

Larry Fuchs, Executive Director
Department of Revenue
104 Carlton Building
Tallahassee, Florida 32399-0100

NOTICE OF RIGHT TO SUBMIT EXCEPTIONS

All parties have the right to submit written exceptions within 15 days from the date of this Recommended Order. Any exceptions to this Recommended Order should be filed with the agency that will issue the Final Order in this case.