

**BEFORE THE OFFICE OF STATE ADMINISTRATIVE HEARINGS
STATE OF GEORGIA**

Petitioner,	,	:	
		:	
		:	
v.		:	Docket No.: OSAH-REV-SUTA- -60-
		:	Beaudrot
		:	
DEPARTMENT OF REVENUE,		:	
Respondent.		:	Agency Reference No.: L1905526304

INITIAL DECISION

This case is an appeal brought by Petitioner (“Petitioner”) challenging a Notice of Proposed Assessment for Sales and Use Tax issued by the Georgia Department of Revenue (“Respondent”) for the period ending June 30, 2009.

The proposed assessment grows out of the transfer and acquisition by the Petitioner of a 2004 Ford F450 Truck in 2009.

This case came on for trial conducted as a telephone hearing on May 22, 2013, at 10:00 o’clock a.m. Mr. represented himself in the hearing.

Prior to the hearing, the parties exchanged exhibits, all of which were admitted into the record without objection.

FINDINGS OF FACT

1.

Petitioner acquired the 2004 Ford F450 Truck Vehicle Identification No.: 1FDXW47P54ED75099 (the “Truck”) on February 19, 2009. (Petitioner’s Exhibit 1).

2.

The Truck was acquired in consideration for the assumption of \$14,822.19 of indebtedness secured by the Truck and owing to _____ Credit Company. (Petitioner's Exhibit 1). Petitioner testified that the indebtedness has subsequently been paid and satisfied in full.

3.

The owner and transferor of the Truck is identified as ("_____"). Mr. _____ is identified as the Owner of _____ and executed the documentation on behalf of _____. (Petitioner's Exhibit 1).

4.

Petitioner testified that when he agreed to acquire the Truck, he did not realize that Mr. _____, individually, was not the owner of the Truck. Rather, he only realized that the Truck was owned by _____ once he received the documentation from Ford Motor Credit.

5.

The Petitioner testified he believed that _____ was in the process of liquidating its business when he acquired the Truck. Petitioner did not produce any corroborating evidence to that effect.

6.

Petitioner acknowledged receipt of letters from the Georgia Department of Revenue requesting the Sales Tax with respect to the Truck, copies of which were admitted as

Respondent's Exhibits R-1 and R-2. Petitioner also acknowledged receipt of the notice of proposed assessment dated January 11, 2010, reflecting tax due in the amount of \$1,011.50. (Respondent's Exhibit R-3).

7.

Petitioner duly filed an Appeal and Demand For Hearing dated April 13, 2010, relating to the Proposed Assessment.

8.

The file in this case was transmitted to the Office of State Administrative Hearings on January 8, 2013.

LAW AND ANALYSIS

Georgia Sales and Use Tax applies to purchases of tangible personal property sold at retail within Georgia unless an exemption applies. O.C.G.A. 48-8-30.

Georgia, by regulation (Reg. 560-12-1-.07), recognizes a casual sale exemption for certain sales. In 2009 this regulation applied to sales of vehicles. The regulation provides in relevant part as follows:

560-12-1-.07 Casual Sale.

- (1) Invoking the rule of *de minimis* and because of the difficulties of administration and enforcement, no sales or use tax liability will be enforced against either the sellers or the purchaser in a casual sale transaction as herein defined, except as hereinafter provided.
- (2) A "casual sale transaction" is:
 - (a) *A sale in which the tangible personal property involved was not acquired or held by the seller for use in the operation of his business or for resale;*
or

- (b) A sale of tangible personal property acquired or held by the seller for use in the operation of his business (not acquired or held for resale) if the total selling price of such sale and all such sales made during the calendar month of such sale and the preceding eleven calendar months does not exceed \$500; or
- (c) A sale of tangible personal property acquired or held by the seller for use in the operation of his business (not acquired or held for resale) if such sale is made in a complete and bona fide liquidation of a business of the seller. For purposes of this paragraph the term "business" means a separate place of business subject to registration under the Act; the term "a complete and bona fide liquidation" means the sale of all the assets of such business conducted over a period of time not exceeding thirty days from the date of the first sale of such assets, or a longer time if approved by the Commissioner as a bona fide liquidation. . . [emphasis added]

It should be noted that the casual sale exemption does not apply if tangible property is sold that is used in a business and exceeds \$500.00 in value, unless, pursuant to Section 560-12-1-.07(c) the sale is part of a complete *bona fide* liquidation of a business completed over a period of thirty (30) days.

Petitioner testified that the business of _____ was a landscaping business, although Petitioner testified he believed it was in the process of being wound up at the time of the acquisition. There is no evidence in the record that the Truck was not used by _____ in its business.

The burden of proof is on the Petitioner in this matter. Undercofler v. White, 113 Ga. App. 853 (1966) Ga. Comp. R. & Regs. 616-1-2-.07(2). Petitioner introduced no evidence that the Truck was not used in the Seller's business.

In light of the foregoing, the sale of the Truck does not qualify for exemption under the casual sale exemption and was subject to Georgia Sales and Use Tax. Therefore, Respondent's assessment of tax in the amount of \$1,011.50 and interest in the amount of \$60.72 is **AFFIRMED**. The Court also finds, however, that the Petitioner acted in good faith, without

knowledge of the existence of the potential liability and in the honest belief that the transaction qualified as a casual sale. Therefore, Respondent's assessment of the penalty is **DENIED**.

CONCLUSION

It is, therefore, **ORDERED** that the Respondent's proposed assessment for tax in the amount of \$1,011.50 and interest in the amount of \$60.72 is **AFFIRMED** and that Respondent's assessment of a penalty with respect to the transaction is **DENIED**.

SO ORDERED, this 30th day of May, 2013.

/s/

CHARLES R. BEAUDROT, JR.
CHIEF JUDGE, GEORGIA TAX TRIBUNAL
On behalf of the
Office of State Administrative Hearings