State of Louisiana
Department of Revenue

Revenue Ruling
No. 07-002
May 22, 2007
Sales Tax

Discussion of Judicial Decision Affecting the Sales and Use Taxation of Airplanes

The purpose of this Revenue Ruling is to discuss the department's application of the decision of the Louisiana Supreme Court in ***Word of Life Christian Center v. West***, 936 So.2d 1226, 2004-1484 (La. Sup. Ct. 4/17/06). In its decision, the Court held that use taxes were due to the State of Louisiana on two airplanes that Word of Life Christian Center, Inc. purchased in the states of Oklahoma and South Carolina and subsequently imported into Louisiana.

The State of Louisiana levies a use tax on tangible personal property that is not sold in the state, but that is used, consumed, distributed, or stored for use or consumption in the state. The Louisiana use tax is levied by La. Rev. Stat. Ann. § 47:302(A)(2), 321(A)(2), 331(A)(2) and the sales tax ordinance of the Louisiana Tourism Promotion District, which each provide tax levies that are essentially identical (except for the rate) to La. Rev. Stat. Ann. § 47:302(A)(2), as follows:

> **A.** There is hereby levied a tax upon the sale at retail, the use, the consumption, the distribution, and the storage for use or consumption in this state, of each item or article of tangible personal property, as defined herein, the levy of said tax to be as follows:
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> **(2)** At the rate of two per centum (2%) of the cost price of each item or article of tangible personal property when the same is not sold but is used, consumed, distributed, or stored for use or consumption in this state; provided there shall be no duplication of the tax.

The Word of Life Christian Center argued the imposition of the use tax was barred as the planes were being used in interstate commerce pursuant to La. Rev. Stat. Ann. § 47:305(E), which now provides, in pertinent part, as follows:

> It is not the intention of any taxing authority to levy a tax upon articles of tangible personal property imported into this state, or produced or manufactured in this state, for export; nor is it the intention of any taxing authority to levy a tax on bona fide interstate commerce; however, nothing herein shall prevent the collection of the taxes due on sales of tangible personal property into this state which are promoted through the use of catalogs and other means of sales promotion and for which federal legislation or federal jurisprudence enables the enforcement of the sales tax of a taxing authority upon the conduct of such business. It is, however, the intention of the taxing authorities to levy a tax on the sale at retail, the use, the consumption, the distribution, and the storage to be used or consumed in this state, of tangible personal property after it has come to rest in this state and has become a part of the mass of property in this state.

Word of Life relied on an interpretation of the above statute by the Louisiana First Circuit Court of Appeal six years earlier in ***Shaw Group, Inc. v. Kennedy***, 767 So.2d 937, 1999-1871 (La.App. 1 Cir. 9/22/00). In ***Shaw Group***, the First Circuit Court established the test of intended "ultimate use" of airplanes in interstate commerce as being determinative of whether the assessment of use taxes on airplanes was barred by La. Rev. Stat. Ann. § 47:305(E). The ***Shaw Group*** Court reasoned that, even though the taxpayer's airplanes were imported into the state, stored in the state between flights, and were occasionally used in for intra-Louisiana flights, the taxation of the airplanes was governed by the taxpayer's intended "ultimate use" of the airplanes in interstate commerce, and the taxation of such intended interstate use was barred by La. Rev. Stat. Ann. § 47:305(E).

In ***Word of Life***, the Louisiana Supreme Court rejected this argument and overturned the decision in ***Shaw Group.*** It also overturned ***Tigator Inc. v. West Baton Rouge Police Jury,*** 94-1771, 94-1772 (La.App. 1st Cir.5/5/95) 657 So.2d 221, writ denied, 95-2126 (La.11/17/95), 663 So.2d 712, which held that use taxes were not due to the Parish of West Baton Rouge on truck trailers and repair parts that were picked up by a trucking company in Texas, brought to West Baton Rouge, and prepared or stored there for future use in the taxpayer's trucking business. These two cases collectively held the intended "ultimate use" of airplanes or truck trailers in interstate commerce barred the Louisiana use taxation of the property. The Supreme Court, relying on the main meaning of the taxing statute, held use taxes were due on the airplanes that Word of Life Christian Center imported into Louisiana. The Court stated its rationale, as follows:

> La. R.S. 47:301(19) states that "use tax" includes the use, the consumption, the distribution, and the storage as herein defined. La. R.S. 47:301(18) provides, in pertinent part, as follows: "For purposes of the imposition of the sales and use tax levied by a political subdivision or school board, 'use' shall mean and include the exercise of any right or power over tangible personal property incident to the ownership thereof...." The statute says nothing about "ultimate use" merely "use." The interpretation of "use" as "ultimate use" conflicts with a plain reading of the statute and leads to absurd consequences. Under Word of Life's reading, so long as a taxpayer intends to use out-of-state purchased goods in interstate commerce, any and all use in the taxing jurisdiction would be immune from state taxation. Such a conclusion contradicts the underlying purposes of the use tax which are: (1) to protect local merchants who would face a competitive disadvantage if resident consumers could purchase similar goods without tax, or at a lower tax rate, in another jurisdiction; and (2) to compensate the state for the erosion of its sales tax base when resident consumers purchase out-of-state goods and then import those goods into Louisiana for use. Indeed, that is the reality of the present case. If Word of Life or similar resident consumers can travel out-of-state and purchase airplanes or other tangible personal property and not pay a sales or use tax, then import those goods into Louisiana for subsequent use in interstate commerce, and be immune from Louisiana use tax because they ultimately used, or planned to use, the goods in interstate commerce, then they have effectively circumvented decades of use tax jurisprudence.

The Louisiana Supreme Court established as the test of use taxability of imported airplanes and similar property the occurrence in Louisiana of a "taxable moment" aside from the continuous use of the property in "bona fide interstate commerce", and the Louisiana use taxation of the property meeting the four-prong test for state use taxation established by the United States Supreme Court in

1977 in ***Complete Auto Transit, Inc. v. Brady***, 430 U.S. 274, 97 S.Ct. 1076, 51 L.Ed.2d 326 (1977). The four-prong test is that (1) the tax is applied to an activity with a substantial nexus to the taxing jurisdiction; (2) the tax is fairly apportioned; (3) the tax is non-discriminatory; and (4) the tax is fairly related to services provided by the taxing jurisdiction.

In the case of the airplanes imported into Louisiana by the Word of Life Christian Center, the Louisiana Supreme Court opined that the "taxable moment" occurred after the out-of-state purchased airplanes were imported in Louisiana, came to rest in Louisiana, and had not yet begun to be consumed in interstate operation by stating, "[w]hen the airplanes had been withdrawn from interstate commerce and had come to rest in Louisiana, Louisiana's tax on storage and use was effective and the tax became due."

The Louisiana Supreme Court further reasoned that not all forms of interstate travel would qualify as "bona fide interstate commerce", the higher standard for use tax exclusion provided by La. Rev. Stat. Ann. § 47:305(E). Again, the Louisiana Supreme Court reasoned as follows:

> We previously determined that both airplanes came to rest and became a part of the mass of property in Louisiana. Next, we must analyze the terms "bona fide interstate commerce" used in La. R.S. 47:305(E). The legislature carefully drafted the statute to include the words "bona fide," which describes and limits the scope of "interstate commerce" which the state is prohibited from taxing. It is clear that the legislature did not intend to exclude all forms of "interstate commerce" from taxation. Black's Law Dictionary 285 (7th ed.1999), defines "commerce" as "[t]he exchange of goods and services ... involving transportation between cities, states, and nations." To interpret "bona fide interstate commerce" as goods traveling in interstate commerce would be to ignore the insertion of the terms "bona fide," which clearly limits the definition of "interstate commerce." The fact that owners use the durable goods (such as airplanes and/or automobiles) for travel across state lines does not necessarily classify the goods as part of "bonafide interstate commerce" as used in La. R.S. 47:305(E).

In order for an airplane that is imported into Louisiana to be considered in bona fide interstate commerce during the airplane's time of use, consumption, distribution or storage in Louisiana, such that the levy of the use tax on the airplane is barred by La. Rev. Stat. Ann. § 47:305(E), the bona fide interstate commerce activity must be continuous and uninterrupted from the moment that the airplane enters the state. If the continuous use of the airplane in bona fide interstate commerce is interrupted at any time after the importation of the airplane into Louisiana, Louisiana use taxes will become payable. Credit against Louisiana state use taxes may be claimed for the rate of sales or use taxes paid in other states, as authorized by La. Rev. Stat. Ann. § 47:303(A)(3).

The department adopts the definition of "bona fide interstate commerce" that includes only the limited scope of activity discussed by the Louisiana Supreme Court in the language quoted above. Specifically, for an airplane or any other commercial transportation vehicle to be considered in bona fide interstate commerce, the vehicle must be used exclusively, in the words of the Court, in "the exchange of goods and services".

Interstate commerce activity means the use of airplanes in the exchange of goods and services

between states. This interstate exchange of goods and services includes not only the for-hire commercial transportation of passengers or property between states, but also the vendor delivery to customers of property sold or leased; the transportation of inventory, assets to be rented or leased, or other direct revenue-producing property to the locations from where the property will be sold, leased, manufactured or fabricated for sale or lease, or deployed for use in the rendering of commercial services; and the transportation of personnel and property across state lines to and from sites where the personnel and property will be used directly in commercial revenue-producing activities. Mileage to transport business owners, officers, or employees between states for purposes other than direct revenue production will not be considered bona fide interstate commerce for the airplanes used in such transportation.

A commercial or private airplane that enters the state from an out-of-state point of origin for the sole purpose of re-fueling, repair, or letting off or taking on passengers or cargo is not subject to the Louisiana use tax on the basis of that entry into the state because, in such instances, the airplane would not have come to rest in the state. However, an airplane that is indefinitely hangered in Louisiana and uses Louisiana as its base of operation for interstate travel is subject to the Louisiana use tax.

The department will apply the decision in ***Word of Life*** for all periods beginning after July 1, 2007.

Questions concerning this matter can be directed to the department's Policy Services Division at 225.219.2780.

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