

BOARD OF TAX APPEALS
STATE OF LOUISIANA

C AND C PERFORMANCE CONSTRUCTION, LLC

VS.

B.T.A. DOCKET NO. 13159B

DEPARTMENT OF REVENUE
OFFICE OF MOTOR VEHICLES

JUDGMENT WITH WRITTEN REASONS

This matter came before the Board for hearing on the Merits on October 9, 2024, with Chairman Francis J. “Jay” Lobrano presiding, and Vice-Chairman Cade R. Cole and Judge Lisa Woodruff-White (Ret.) present. Appearing before the Board were: Eulis Simien, attorney for C and C Performance Construction, LLC (“Taxpayer”); Aaron Long, attorney for the Department of Revenue (“LDR”); and Jennifer Del Murray, attorney for the Office of Motor Vehicles (“OMV”) (collectively, “Respondents”). At the conclusion of the hearing, the Board took the matter under advisement. In accordance with the attached Written Reasons for Judgment, the Board¹ now rules as follows:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Taxpayer’s purchase of the 2022 Chevrolet Corvette (“Corvette”) from Billy Navarre Chevrolet (“BNC”) was a non-taxable sale for resale.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that LDR shall refund to the Taxpayer the portion of the tax, penalties, and interest paid on the purchase of the Corvette attributable to sales tax, penalties, and interest imposed by the State of Louisiana: \$3,827,21 plus interest as provided for by law.

¹ Chairman Lobrano dissents and assigns Written Reasons for Dissent, attached hereto.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that OMV shall refund to the Taxpayer the portion of the tax, penalties, and interest paid on the purchase of the Corvette attributable to sales tax, penalties, and interest imposed by local taxing authorities: \$4,788.35, plus interest as provided for by law.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that Taxpayer is not entitled to a refund of title and handling fees.

JUDGMENT RENDERED AND SIGNED AT BATON ROUGE,
LOUISIANA, THIS 5th DAY OF DECEMBER, 2024.

FOR THE BOARD:



CADE R. COLE, VICE-CHAIRMAN
LOUISIANA BOARD OF TAX APPEALS

C AND C PERFORMANCE CONSTRUCTION, LLC

VS.

B.T.A. DOCKET NO. 13159B

DEPARTMENT OF REVENUE
OFFICE OF MOTOR VEHICLES

WRITTEN REASONS FOR JUDGMENT

This matter came before the Board for hearing on the Merits on October 9, 2024¹, with Chairman Francis J. “Jay” Lobrano presiding, and Vice-Chairman Cade R. Cole and Judge Lisa Woodruff-White (Ret.) present. Appearing before the Board were: Eulis Simien, attorney for C and C Performance Construction, LLC (“C&C”); Aaron Long, attorney for the Department of Revenue (“LDR”); and Jennifer Del Murray, attorney for the Office of Motor Vehicles (“OMV”). At the conclusion of the hearing, the Board took the matter under advisement. The Board² now issues the foregoing Judgment for the following reasons.

¹ This matter was previously set for a hearing on the merits on June 14, 2023. Prior to the hearing date, LDR filed an unopposed Motion to Continue, which was served on C&C’s then-representative and owner, Charles Malveaux. Shortly before the scheduled hearing time, counsel for LDR informed the Board by email that the continuance was no longer necessary. At the scheduled date and time for the hearing, the matter was called and Mr. Malveaux failed to appear. LDR proceeded to orally move for dismissal of the appeal based on the failure of C&C or its representative to appear. The Board orally granted LDR’s motion.

After the hearing date, but before the ruling was issued in writing, C&C obtained representation from Mr. Simien. Mr. Simien proceeded to enroll and file a motion to reset the hearing. In the Motion, counsel explained that Mr. Malveaux had been stationed out of state on a military assignment and that he believed the matter would be continued per LDR’s motion. The Board accordingly set aside its oral ruling and rescheduled the matter for hearing.

After the matter was rescheduled, counsel for OMV enrolled and filed an Answer. Thereafter the matter was rescheduled several times before coming before the Board again in July 2024, this time for a status conference. At the status conference, counsel stated that they were in the process of determining which state agencies would need to be joined as defendants. According to counsel, joinder of additional agencies was necessary because the disputed taxes had been dispersed to multiple government entities.

However, the Board advised counsel that it was not necessary to join additional defendants. Specifically, La. R.S. 47:303(B)(1) states in relevant part that the “collector of revenue shall be the only proper party to defend or to institute any legal action involving the tax imposed by R.S. 47:302(A) on the sale or use of any motor vehicle, automobile, motorcycle, truck, truck-tractor, trailer, semi-trailer, motor bus, house trailer or any other vehicle subject to the vehicle registration license tax. (R.S. 47:451 *et seq.*)” Moreover, the OMV did not object to being joined as a defendant in the instant matter.

² Chairman Lobrano dissents and assigns Written Reasons for Dissent, attached hereto.

Facts:

C&C is an LLC owned and operated by Charles Malveaux. C&C is in the automobile resale business. It is a registered used car dealer and it possesses a used car resale certificate. Mr. Malveaux testified that C&C had a pattern of business activity of purchasing vehicles wholesale and then reselling those vehicles to dealerships. C&C purchased a 2022 Corvette ("Corvette") from Billy Navarre Chevrolet ("BNC") on December 28, 2021. Mr. Malveaux testified that the sole reason for C&C's purchase of the Corvette was for resale to Platinum Leasing of Orlando Inc. ("PLO"), a dealer in Florida. After purchasing the Corvette, Mr. Malveaux had it transported by truck to PLO. He did not drive or otherwise use the Corvette himself, nor did he ever intend to do so.

At the hearing, the Department introduced: the Invoice from BNC to C&C; BNC's Odometer Disclosure Statement; the Title Application; the Vehicle Registration; and C&C's Used Motor Vehicle Dealer License. The Department's exhibits show: the Corvette was purchased as a new car with two miles on the odometer; title was applied for as though C&C were buying the Corvette for its own use; and that title was issued to C&C as though it were the ultimate consumer.

According to Mr. Malveaux, he used an agent to facilitate the process. The agent accidentally took his application to a retail license location, instead of taking it directly to the OMV. The retail license location submitted an application for title in the Taxpayer's name as the user of the Corvette and paid the tax out of their tax account. When the agent had taken the application to the OMV in the past, this did not occur.³ When Mr. Malveaux learned of the error, he contacted the OMV, and their employee⁴ told him that he should not have had to pay the tax. Mr. Malveaux further

³ Hearing Transcript 10.

⁴ The employee referred to here is not the same employee that OMV called as a witness during the hearing.

testified that his agent took the paperwork to an agent of the OMV who did not read the paperwork and did not realize that C&C was a dealer.⁵

In support of Mr. Malveaux's testimony, Taxpayer introduced into evidence a Bill of Sale from C&C to PLO. The Bill of Sale is on a form provided by Manheim.⁶ Mr. Malveaux testified that Manheim forms are only used in transactions between dealers, and are not used in consumer transactions. The Manheim Bill of Sale shows that there was two miles of mileage on the Corvette when it was delivered to PLO, which is the same mileage that was shown on the BNC Invoice. This confirms that neither Mr. Malveaux nor C&C made any use of the Corvette.

Discussion:

La. R.S. 47:303(B) provides for the collection of Louisiana sales tax on vehicles, and states:

The tax imposed by R.S. 47:302(A) on the sale or use of any motor vehicle, automobile, motorcycle, truck, truck-tractor, trailer, semi-trailer, motor bus, house trailer, or any other vehicle subject to the vehicle registration license tax shall be collected as provided in this Subsection.

(1) The tax levied by R.S. 47:302(A) on any such vehicle shall be paid to the vehicle commissioner as the agent of the collector of revenue at the time of application for a certificate of title or vehicle registration license and such tax shall be administered and collected by the vehicle commissioner in compliance with rules and regulations issued by the collector of revenue and in compliance with the law as construed by the collector of revenue. No certificate of title or vehicle registration license shall be issued until this tax has been paid. The collector of revenue shall be the only proper party to defend or to institute any legal action involving the tax imposed by R.S. 47:302(A) on the sale or use of any motor vehicle, automobile, motorcycle, truck, truck-tractor, trailer, semi-trailer, motor bus, house trailer or any other vehicle subject to the vehicle registration license tax. (R.S. 47:451 et seq.).

⁵ Hearing Transcript 10-11.

⁶ Counsel for LDR objected to the introduction of this document. The Board overruled the objection because LDR's line of questioning on cross-examination raised the issue of whether the Taxpayer had any documentation to show that he purchased the vehicle with the intent to resell.

As is stated in the statute, La. R.S. 47:303(B) provides for the collection of tax imposed by La. R.S. 47:302(A). La. R.S. 47:302(A) levies tax on: "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" "Sale at retail" is defined by La. R.S. 47:301(10)(a)(i) as follows:

Solely for the purposes of the imposition of the state sales and use tax, "retail sale" or "sale at retail" means a sale to a consumer or to any other person for any purpose other than for resale as tangible personal property, or for the lease of automobiles in an arm's length transaction, and shall mean and include all such transactions as the secretary, upon investigation, finds to be in lieu of sales; provided that sales for resale or for lease of automobiles in an arm's length transaction must be made in strict compliance with the rules and regulations. Any dealer making a sale for resale or for the lease of automobiles, which is not in strict compliance with the rules and regulations, shall himself be liable for and pay the tax.

As stated in the quoted provision, a sale for resale is not a taxable sale at retail. Generally, the substance of a transaction, not its form, determines whether that transaction is subject to sales tax. *See United Companies Printing Co. v. City of Baton Rouge*, 569 So.2d 186, 188 (La. Ct. 1 App. 1990), *writ denied*, 572 So.2d 73 (La.1991). However, a sale for resale must be made in strict compliance with the rules and regulations. The consequence for non-compliance is that the dealer making the sale becomes liable for the tax.

As mentioned above, C&C's business activities are purchasing vehicles wholesale and then reselling those vehicles to dealerships. That is exactly what occurred in the transaction at issue in this case. The evidence introduced, combined with the testimony of Mr. Malveaux, clearly indicate that C&C was not the ultimate consumer of the Corvette. The undisputed facts are that Mr. Malveaux, notwithstanding that he possesses a Used Motor Vehicle Dealer License, purchased the Corvette as a new vehicle from BNC and then resold the Corvette as a new vehicle to PLO. It is also an undisputed fact that the Corvette was purchased and re-sold by C&C un-driven, as evidenced by the two miles on the vehicle at the purchase and at the re-sale, further evidencing that the transaction at issue was in substance a non-

taxable sale for resale. Counsel for LDR also conceded that the registration was in error.⁸

This leaves the issue of the apparent error in the formalities observed in the transaction. More specifically, the Board must decide whether the application for title as a consumer renders the transaction taxable. Although Mr. Malveaux did not make the mistake himself, he acknowledged responsibility for the acts of his agent during his testimony, including taking the paperwork to an agent of the OMV rather than to the OMV directly. However, Mr. Malveaux also testified that he has sold vehicles in the past without title and with only the Certificate of Origin for a vehicle.⁹ Mr. Malveaux had followed this exact same procedure before in reselling the same type of car to the same out of state wholesaler. When the agent took his application straight to the OMV, there were no issues with the transaction or taxes imposed. Respondents did not introduce evidence to controvert Mr. Malveaux's testimony in this respect.

The evidence presented to the Board shows that there was no need for the Taxpayer to obtain title to the vehicle. Taxpayer had previously complied with the rules and regulations for making a sale for resale with only a Manufacturer's Certificate of Origin. The mistakes of the agent of Mr. Malveaux and the agent of the OMV in processing the title application to the Corvette was superfluous to the rules and regulations for making a sale for resale. Thus, even though the Taxpayer is bound by its agent's actions, the facts of this case show that there was no failure to strictly comply with the rules and regulations applicable to a sale for resale.

Conclusion:

The Board finds that that the Taxpayer's purchase of the Corvette from BNC was a non-taxable sale for resale. Generally, such refunds shall be made out of any

⁸ Hearing Transcript 39.

⁹ In this case, the Certificate of Origin was issued by General Motors to BNC.

current collections of the particular tax which was overpaid. La. R.S. 47:1621(D)(1). As counsel for LDR pointed out at the hearing, the tax collected by OMV on the sale of the Corvette was attributable in part to state sales tax and in part to local sales tax. As the ultimate collector of the state tax, LDR is liable for the portion of the amount at issue attributable to state tax. With respect to OMV, however, under La. R.S. 47: 303(B)(3)(b)(ii), OMV collects “tax imposed by the political subdivisions on the sale or use of vehicles subject to the Vehicle Registration License Tax Law (R.S. 47:451 et. seq.)” and distributes said collections “to the political subdivisions as provided for in R.S. 47:301(10)(f) and (18)(b).” Accordingly, the Board holds that OMV is liable for the portion of the amount at issue attributable to parish and local taxes and may deduct the refund from the remittance of tax to those political subdivisions who received the erroneous tax

Accordingly, LDR shall refund to the Taxpayer the portion of the tax, penalties, and interest paid on the purchase of the Corvette attributable to sales tax, penalties, and interest imposed by the State of Louisiana and OMV shall refund to the Taxpayer the portion of the tax, penalties, and interest paid on the purchase of the Corvette attributable to sales tax, penalties, and interest imposed by local taxing authorities. Finally, the Board agrees with counsel for OMV that the Taxpayer is not entitled to a refund of the title and handling fee, because the Taxpayer did in fact receive title to the Corvette.

BATON ROUGE, LOUISIANA, THIS 5th DAY OF DECEMBER, 2024.

FOR THE BOARD:



**CADE R. COLE, VICE-CHAIRMAN
LOUISIANA BOARD OF TAX APPEALS**

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B.T.A. DOCKET NO. 13159B

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WRITTEN REASONS FOR DISSENT

As a plaintiff seeking a refund, the Taxpayer has the burden of proving each element of their entitlement to relief. La. R.S. 47:301(10)(a)(i) makes the definition of a sale for resale provisional upon a dealer's strict compliance with the rules and regulations. The Taxpayer in this case is a dealer and the sale of the Corvette is alleged to be a sale for resale. It was his burden to prove compliance with the rules and regulations. Obviously, Taxpayer did not comply with the rules and regulations in this case. Taxpayer allegedly purchased a new motor vehicle under his used motor vehicle dealer's license.

The vast majority of Taxpayer's evidence at the hearing was offered in the form of his own testimony. However, OMV provided countervailing testimony from its Public Tag Agent, Dejanee McNelle. In her testimony, Ms. McNelle demonstrated greater knowledge of the OMV's rules and regulations than Mr. Malveaux and she provided a more credible representation of the rules and regulations applicable to used car dealers. She testified that it was not OMV's normal practice to allow used car dealers to purchase new car inventory. Mr. Malveaux also admitted that he was responsible for the actions of his agent and could not provide any evidence to corroborate his assertion that he actually instructed the agent to take the application straight to the OMV.

The Taxpayer's testimony was further undermined by allegations in the Petition, particularly:

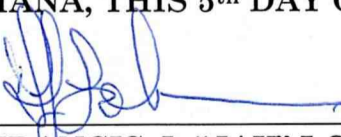
Under Louisiana law, once the Petitioner a Louisiana licensed used car dealer, acquired the vehicle from the new car dealer, it became a used vehicle by definition for the purposes of resale. . . . It is clear that once the vehicle was sold to the petitioner it was by definition a “used vehicle” and subject to Petitioner’s Used Car Dealer’s license and which granted the ability to buy and sell it as such without there being no prohibition for its transfer to another out of state dealer. [sic].

Granted, this statement seems to reflect a misunderstanding of the law¹ when read in the context of the other allegations in the Petition. Nevertheless it contradicts the testimony concerning his alleged intent to purchase the Corvette for resale.

I would also find that Respondents provided more persuasive documentary evidence than the Taxpayer. The only document that the Taxpayer was able to produce was a Bill of Sale. He retrieved this document from his cell phone while the matter was in recess. He further admitted that he had never provided it to the Respondents until he was cross-examined at the hearing.

Finally, it should be noted that OMV and LDR are charged with the responsibility of collecting and administering the tax at issue. The legislature has delegated to them the authority to promulgate rules and regulations that dealers must adhere to. *See e.g.* La. R.S. 47:303(A)(3)(a). In such instances, compliance with such rules is required in order to be eligible for the relevant exemption. *See e.g. Succ’n of Cotton v. Collector*, 579 So.2d 499 (La. Ct. App. 4 Cir. 1991). The efficient and rational administration of the tax at issue is not served by a ruling that allows a dealer with a license used cars to buy and sell new cars without paying the tax. Accordingly, I respectfully dissent from the Board’s ruling.

BATON ROUGE, LOUISIANA, THIS 5th DAY OF DECEMBER, 2024.



FRANCIS J. “JAY” LOBRANO, CHAIRMAN
LOUISIANA BOARD OF TAX APPEALS

¹ A “used” motor vehicle is one that has been “ previously titled to the first person or corporate entity, other than a dealer purchasing in his capacity as a dealer, who in good faith purchases a new motor vehicle for purposes other than resale.” La. R.S. 32:781(10), (12); La. R.S. 32:1252(60).