

**BOARD OF TAX APPEALS
STATE OF LOUISIANA
LOCAL TAX DIVISION**

ETA PARTNERS, LLC

PETITIONER

VERSUS

DOCKET NO. L00900

**CADDO-SHREVEPORT SALES
AND USE TAX COMMISSION
RESPONDENT**

JUDGMENT WITH WRITTEN REASONS

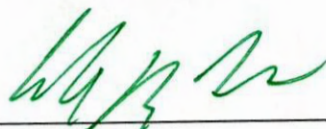
On July 14, 2021, this matter came before the Board for hearing on the Cross-Motions for Summary Judgment filed by ETA Partners, LLC (“Petitioner” or “Taxpayer”) and Caddo-Shreveport Sales and Use Tax Commission (“Respondent” or “Collector”), with Local Tax Judge Cade R. Cole presiding. Present at the hearing were Luke D. Whetstone on behalf of Petitioner, and Richard G. Barham on behalf of Respondent. After the hearing, the matter was taken under advisement. The Board now issues Judgment in accordance with the written reasons attached hereto.

IT IS ORDERED, ADJUDGED AND DECREED that Respondent’s Motion for Summary Judgment is GRANTED and Petitioner’s Motion for Summary Judgment is DENIED.

IT IS FURTHER ORDERED, ADJUDGED AND DECREED that Judgment BE AND IS HEREBY RENDERED IN FAVOR OF RESPONDENT AND AGAINST PETITIONER, AND THAT THE PETITION BE AND IS HEREBY DISMISSED.

Judgment Rendered and Signed at Baton Rouge, Louisiana
on this the 8 day of December, 2021.

FOR THE BOARD:



LOCAL TAX JUDGE CADE R. COLE

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WRITTEN REASONS FOR JUDGMENT

On July 14, 2021, this matter came before the Board for hearing on the Cross Motions for Summary Judgment filed by ETA PARTNERS, LLC (“Petitioner” or “Taxpayer”) and CADDO-SHREVEPORT SALES AND USE TAX COMMISSION (“Respondent” or “Collector”), with Local Tax Judge Cade R. Cole presiding. Present at the hearing were Luke D. Whetstone on behalf of Petitioner, and Richard G. Barham on behalf of Respondent. After the hearing, the matter was taken under advisement. The Board now issues the foregoing Judgment for the following reasons.

Petitioner comes before the Board via the Payment Under Protest Procedure. Respondent formally assessed Petitioner for use tax, penalties, and interest in the combined amount of \$264,307.02 relating to a Textron Aviation Citation CJ4 aircraft (the “Plane”). On June 30, 2016, Petitioner purchased and took delivery the Plane in Wichita, Kansas. Petitioner has never paid sales tax on the purchase of the Plane. Petitioner’s argument is that use of the Plane is excluded from

taxation under R.S. 47:305(E), which announces the legislature's intent to not levy a tax on "bonafide interstate commerce." Respondent's position is that the statute does not apply because the Plane was not used exclusively in the uninterrupted exchange of goods and services between states.

Under *Word of Life Christian Center v. West*, 2004-1484 (La. 4/17/06), 936 So.2d 1226, "a taxable moment occurs when out-of-state purchased goods have not yet reached the end of their interstate transportation into the taxing jurisdiction, and have not yet begun their subsequent journey in interstate commerce." Petitioner's intent to use the Plane in interstate commerce does not matter. If the Plane came to rest in the taxing jurisdiction and became a part of the mass of property there, then R.S. 47:305(E) does not protect the Plane from taxation. Even if the Plane only came to rest in the Jurisdiction for a moment, the Supreme Court emphasized on rehearing that there is no temporal factor in the taxable moment analysis. *Id.* at 30, 1246. Only continuous and uninterrupted movement in interstate commerce triggers the protection of R.S. 47:305(E). See *Firestone Polymers v. Calcasieu Parish Sch. Sys.*, 2007-0501, p. 11 (La. App. 3 Cir. 10/31/07), 969 So.2d 748, 754.

The Plane in this case was first flown to Texas, where Petitioner participated in a business meeting. The meeting was concluded in less than a day, and the Plane was then flown to Shreveport. Since then, the Plane has been almost permanently hangared in Shreveport. Of 122 flights since its purchase, the Plane has returned to its home base in

Shreveport in all but 7 instances. Petitioner's affiant states that since July 1, 2016, the Plane has been hangared in Shreveport "between its continuous use in interstate commerce." Bona fide interstate commerce is not to be interrupted by intervals of rest. The Plane came to rest in Shreveport when it was hangared there. The taxable moment occurred within Respondent's taxing jurisdiction.

Petitioner argues that R.S. 47:305(E) was enacted in 1948 with the intent of preventing taxation on interstate commerce. This argument has already been disposed of. In *Word of Life*, the Supreme Court examined the legislature's intent to protect interstate commerce from taxation and decisively found that intent to be limited only to "bona fide" interstate commerce. The Board is bound by that conclusion. For that reason, Petitioner's argument based on Professor's Oreck's interpretation of the statute is also a non-starter.

Petitioner also contends that at "no point in *Word of Life* did the Court disagree with or overrule the position set forth in [*The Shaw Group, Inc. v. Kennedy*, 99-1871 (La. App. 1 Cir. 9/22/00), 767 So.2d 937] that the transportation of employees between the states constituted interstate commerce. Petitioner's reading of *Word of Life* at best misses the point of the taxable moment analysis, and more importantly seems to ignore the import of Supreme Court's express and explicit overruling of *Shaw's* ultimate use test.

For the foregoing reasons, the Board concludes that the taxable moment occurred in the Collector's jurisdiction. The Collector correctly assessed use tax against Petitioner with respect to the Plane.

Accordingly, the Petitioner's demand for return of its Payment Under Protest must be denied and the Petition must be dismissed. Judgment will be rendered accordingly.

Baton Rouge, Louisiana, this 8 day of December, 2021.

FOR THE BOARD:

A handwritten signature in green ink, appearing to be 'Cade R. Cole', written over a horizontal line.

LOCAL TAX JUDGE CADE R. COLE