

BEFORE THE STATE BOARD OF EQUALIZATION

FOR THE STATE OF WYOMING

IN THE MATTER OF THE APPEAL OF )  
MONTANA BUTTERFLY, LLC ) Docket No. 2017-70  
FROM A DECISION BY THE )  
DEPARTMENT OF REVENUE (Sales Tax) )

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**FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION, AND ORDER**

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**STATEMENT OF THE CASE**

Montana Butterfly, LLC appeals a decision of the Wyoming Department of Revenue declaring that Montana Butterfly owes Wyoming use tax on an airplane it bought in another state.

An aggrieved taxpayer may file an appeal with the Wyoming State Board of Equalization within 30 days of the Department's final decision. Rules, Wyo. State Bd. of Equalization, ch. 2 § 5(e) (2006). The Department issued its final decision on October 31, 2017. (Ex. 500). Montana Butterfly filed its appeal 13 days later. (Notice of Appeal). Accordingly, the appeal was timely and the State Board has jurisdiction to decide this matter.

The Wyoming State Board of Equalization, Chairman Martin L. Hardsocg, Vice-Chairman David L. Delicath, and Board Member E. Jayne Mockler, held an evidentiary hearing. After considering the evidence, the State Board affirms the Department's decision.

**APPEARANCES**

Ray Johnson appeared on behalf of Montana Butterfly and was its only witness.

Karl D. Anderson, Senior Assistant Attorney General, Wyoming Attorney General's Office, appeared on behalf of the Wyoming Department of Revenue.

**ISSUE**

Montana Butterfly states the issue as: "Wyoming has no basis to assess sales tax on property that complies with the laws of another state." (Mont. Butterfly Prelim. Statement at 2). The Department states the issue as: "Did a taxable event occur when the aircraft was first used and/or stored within Wyoming?" (Dept. Prelim. Statement at 2).

We re-phrase the issue as: Wyoming statutes impose a use tax on tangible personal property that is used, stored, or consumed in Wyoming. Montana Butterfly bought an airplane from a California dealer, took delivery of the airplane in Utah, and then stored the airplane in Wyoming. Does Montana Butterfly owe Wyoming use tax on the airplane?

## **FINDINGS OF FACT**

A preponderance of the evidence establishes these facts:

1. Montana Butterfly, LLC, is a Montana corporation. In 2015, Montana Butterfly bought a used airplane from a vendor in California for \$34,000 and had it delivered to an airport in Salt Lake City, Utah. (Ex. 504, at 17-18; Hr’g Recording). Montana Butterfly refueled the airplane in Salt Lake City, and may have had some maintenance work done. (Hr’g Recording). Ray Johnson of Montana Butterfly then flew the airplane to Evanston, Wyoming. *Id.* Montana Butterfly used the airplane in Wyoming and hangered it at the Evanston airport until it sold the airplane. *Id.* (Ex. 504, at 19).
2. California did not collect sales tax on the airplane because it was going to another state. *Id.* Utah did not collect sales or use tax on the airplane because Montana Butterfly reported that the airplane had been in Utah only once, for about 30 minutes. (Ex. 503, at 7). Utah officials, thinking that use tax might be due in Wyoming, passed that information along to the Department. (Ex. 503, at 5).
3. The Department sent Montana Butterfly a notice on July 10, 2017, asking it to submit a tax return. (Ex. 501, at 2). It sent another letter the next day stating that Montana Butterfly owed use tax on the airplane and, again, asking it to complete and submit a return. (Ex. 502). Montana Butterfly did not respond to either of those letters. (Hr’g Recording). The Department, having received no information from Montana Butterfly, sent Montana Butterfly a use tax assessment in the amount of \$1,700 on October 31, 2017. (Ex. 500).

## **CONCLUSIONS OF LAW**

### **A. State Board’s review function and burdens of proof**

4. This Board shall “review final decisions of the department upon application of any interested person adversely affected[.]” Wyo. Stat. Ann. § 39-11-102.1(c) (2015). Our role in such matters is to adjudicate the dispute between the parties.

It is only by either approving the determination of the Department, or by disapproving the determination and remanding the matter to the Department, that the issues brought before the Board for review can be resolved successfully without invading the statutory prerogatives of the Department.

The statutory mandate to the Board is not to maximize revenue or to punish nettlesome taxpayers, but to assure the equality of taxation and fairly adjudicate disputes brought before it.

*Amoco Prod. Co. v. Wyo. State Bd. of Equalization*, 12 P.3d 668, 674 (Wyo. 2000).

5. As the adjudicating body, we “[d]ecide all questions that may arise with reference to the construction of any statute affecting the assessment, levy and collection of taxes, in accordance with the rules, regulations, orders and instructions prescribed by the department[.]” Wyo. Stat. Ann. § 39-11-102.1(c)(iv) (2015).

6. Normally, a party asserting that it should be exempt from a tax has the burden of proof. *PacifiCorp, Inc. v. Dep’t of Revenue, State of Wyo.*, 2017 WY 106, ¶ 11, 401 P.3d 905, 909 (Wyo. 2017) (citing *Comm’rs of Cambria Park v. Bd. of Cty. Comm’rs of Weston Cty.*, 174 P.2d 402, 405 (Wyo. 1946)). But, “[i]n proceedings involving the question of whether or not there is a taxable event under Wyoming law, the Petitioner shall have the burden of going forward and the Department shall have the ultimate burden of persuasion.” Rules, Wyo. State Bd. of Equalization, ch. 2 § 20 (2006).

7. None of the material facts are disputed. This case presents only issues of statutory construction, so our standard of review is de novo. *Town of Pine Bluffs v. Eisele*, 2017 WY 117, ¶ 9, 403 P.3d 126, 128 (Wyo. 2017) (quoting *Bates v. Chicago Lumber Co. of Omaha*, 2016 WY 58, ¶ 27, 375 P.3d 732, 739 (Wyo. 2016)).

B. Applicable statutes and rules

Our resolution of this case will depend on these statutes and rules.

8. “ ‘Person’ means an individual, partnership, corporation, company or any other type of association and any agent or officer of any partnership, corporation, company or other type of association[.]” Wyo. Stat. Ann. § 39-11-101(a)(xiii) (2015).

9. “ ‘Storage’ means the **keeping or retention in this state** of tangible personal property purchased from a vendor for any purpose except for sale in the course of business or subsequent use outside the state[.]” Wyo. Stat. Ann. § 39-16-101(a)(v) (2015) (emphasis added).

10. “ ‘Tangible personal property’ means all personal property that can be seen, weighed, measured, felt or touched, or that is in any other matter perceptible to the senses.” Wyo. Stat. Ann. § 39-16-101(a)(vi) (2015).

11. “ ‘Use’ means the exercise of any right or power over tangible personal property incident to ownership or by any transaction where possession is given by lease or contract[.]” Wyo. Stat. Ann. § 39-16-101(a)(ix) (2015).

12. **Persons making first use of taxable services or storing, using or consuming tangible personal property** or specified digital products, except as otherwise provided in this paragraph, **are liable for the tax imposed by this article.** Specified digital products are only subject to the tax imposed by this article if the purchaser has permanent use of the specified digital product. A vendor who purchases specified digital products for further commercial broadcast, rebroadcast, transmission, retransmission, licensing, relicensing, distribution, redistribution or exhibition in whole or in part to another person shall be considered a wholesaler and not subject to the tax imposed by this article. Those services provided by a trade association as part of a member benefit are not subject to the tax imposed by this subparagraph. The liability is not extinguished until the tax has been paid to the state but a receipt given to the person by a registered vendor in accordance with paragraph (c)(i) of this section is sufficient to relieve the purchaser from further liability[.]

Wyo. Stat. Ann. § 39-16-103(a)(i) (2015) (emphasis added).

13. **“Persons making first use of taxable services or storing, using or consuming tangible personal property or specified digital products are liable for the tax imposed by this article.”** Wyo. Stat. Ann. § 39-16-103(c)(ii) (2015) (emphasis added).

14. **“Every person making first use of taxable services or storing, using or consuming tangible personal property or specified digital products purchased from a vendor who does not maintain a place of business in this state is liable for the tax imposed by this article.”** Wyo. Stat. Ann. § 39-16-103(c)(vi) (2015) (emphasis added).

15. The Department shall allow credit for sales or use tax legally imposed and paid to another state on a purchase equal to but not exceeding the Wyoming use tax liability on that purchase. Claims for the off-setting credit shall be substantiated with copies of invoices showing sales or use tax paid. Offsetting credits can only be used within statutory time frames.

Rules, Wyo. Dep’t of Revenue, ch. 2, §3(h)(ii) (2014).

C. *Admiral Beverage does not control*

16. During the hearing, both parties, instinctively it seemed, invoked the principles of “first use” and “prior use” as explained in *In re Admiral Beverage*, 2016 WL 6395731, Docket No. 2014-107, ¶¶ 38-66 (Wyo. State Bd. of Equalization, Oct. 19, 2016).

17. The Department's rules at issue in *Admiral Beverage* precluded collection of Wyoming use tax on property that had been used or stored in another state before it entered Wyoming. *Id.*

18. While "first use" and "prior use" carried the day in *Admiral Beverage*, they do not control this decision because the Department has changed its rules. Under the current statutes and rules, personal property brought into Wyoming for use, storage, or consumption is subject to use tax, even if it was previously used or stored in another state.

19. While we can imagine situations in which strict application of the statutes and rules would produce absurd results, this case does not present one of those situations.

D. Application of the law to the facts

20. This case requires us to decide whether the Department erred by determining that Montana Butterfly is required to pay use tax in Wyoming on the aircraft it bought from a dealer in California, took possession of in Utah, and then hangered in Wyoming.

21. The applicable statutes, Wyoming Statutes sections 39-16-103(a)(i), 39-16-103(c)(ii), and 39-16-103(c)(vi), *supra* ¶¶ 12-14, are redundant. Stripped of language that does not apply here, they read respectively: "Persons ... storing, using or consuming tangible personal property ... are liable for the tax imposed by this article"; "Persons ... storing, using or consuming tangible personal property ... are liable for the tax imposed by this article"; and "Every person ... storing, using or consuming tangible personal property ... purchased from a vendor who does not maintain a place of business in this state is liable for the tax imposed by this article."

22. Those statutes require the Department establish three conditions before it can collect use tax from Montana Butterfly.

23. First, the Department must show that Montana Butterfly is a person. Wyoming Statutes section 39-11-101(a)(xiii), *supra* ¶ 8, defines "person" to include corporations. Montana Butterfly is a corporation, so it is a person.

24. Second, the Department must show that Montana Butterfly stored, used, or consumed the airplane in Wyoming. Wyoming Statutes section 39-16-101(a)(v), *supra* ¶ 9, defines "storage" as "keeping or retention in this state[.]" Montana Butterfly kept its airplane in a hangar in Evanston, Wyoming. Wyoming Statutes section 39-16-101(a)(ix), *supra* ¶ 11, defines "use" as "the exercise of any right or power over tangible personal property incident to ownership[.]" Montana Butterfly exercised its right or power over the airplane, in Wyoming, by flying it for company purposes. (Hr'g Recording; Ex. 504, at

19). Thus, the undisputed facts show that Montana Butterfly both stored and used the airplane in Wyoming.

25. Third, the Department must show that the airplane is “tangible personal property.” That phrase is defined at Wyoming Statutes section 39-16-101(a)(vi), *supra* ¶10, to include “personal property that can be seen, weighed, measured, felt or touched.” Airplanes are personal property and they can be seen, weighed, measured, felt, and touched. Airplanes are, therefore, tangible personal property.

### CONCLUSION

26. The Department has borne its burden of proving that the airplane is subject to Wyoming use tax because Montana Butterfly bought it in another state and then stored and used it in Wyoming.

### ORDER

The Department’s decision is **affirmed**.

**Pursuant to Wyoming Statutes section 16-3-114 (2017) and Rule 12, Wyoming Rules of Appellate Procedure, any person aggrieved or adversely affected in fact by this decision may seek judicial review in the appropriate district court by filing a petition for review within 30 days after the date of this decision.**

DATED this 5<sup>th</sup> day of June 2018.

#### STATE BOARD OF EQUALIZATION

  
Martin L. Hardsocg, Chairman

  
David Delicath, Vice-Chairman

  
E. Jayne Mockler, Board Member

ATTEST:


  
Nadia Broome, Executive Assistant

## CERTIFICATE OF SERVICE

I certify that on the 5<sup>th</sup> day of June 2018, I served the foregoing FINDINGS OF FACT, CONCLUSIONS OF LAW, DECISION, AND ORDER by placing a true and correct copy thereof in the United States Mail, postage prepaid, and properly addressed to the following:

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