

**OHIO BOARD OF TAX APPEALS**

Continental Leasing, Inc., )  
 )  
 Appellant, ) CASE NO. 2004-A-443  
 )  
 vs. ) (SALES TAX)  
 )  
 William W. Wilkins, Tax Commissioner ) DECISION AND ORDER  
 of Ohio, )  
 )  
 Appellee. )  
 )

APPEARANCES:

For the Appellant - NO APPEARANCE  
Continental Leasing, Inc.  
175 Middlesex Tpke  
P.O. Box 9137  
Bedford, MA 01730-9137

Notice of Appeal  
Filed By - Rositza Racheva, Tax Accountant  
Continental Resources, Inc.  
175 Middlesex Tpke  
P.O. Box 9137  
Bedford, MA 01730-9137

For the Appellee - Jim Petro  
Attorney General of Ohio  
Richard C. Farrin  
Assistant Attorney General  
30 East Broad Street, 16<sup>th</sup> Floor  
Columbus, Ohio 43215

Entered October 15, 2004

Ms. Jackson, Ms. Margulies, and Mr. Eberhart concur.

This cause and matter came on to be considered by the Board of Tax Appeals upon a notice of appeal filed by the above-named appellant from a final determination of the Tax Commissioner. In such determination, the commissioner denied appellant's application for refund of sales tax, filed pursuant to R.C. 5739.07,

wherein appellant claimed that the tax in question was erroneously collected and paid to the Treasurer of State.

The matter was submitted to the Board of Tax Appeals upon the notice of appeal and the statutory transcript certified to this board by the Tax Commissioner. All parties waived their right to appear before the board and present evidence and/or testimony in support of their positions.

In reviewing appellant's appeal, we recognize the presumption that the findings of the Tax Commissioner are valid. *Alcan Aluminum Corp. v. Limbach* (1989), 42 Ohio St.3d 121. It is therefore incumbent upon a taxpayer challenging a finding of the Tax Commissioner to rebut the presumption and establish a right to the relief requested. *Belgrade Gardens v. Kosydar* (1974), 38 Ohio St.2d 135; *Midwest Transfer Co. v. Porterfield* (1968), 13 Ohio St.2d 138. Moreover, the taxpayer is assigned the burden of showing in what manner and to what extent the Tax Commissioner's determination is in error. *Federated Dept. Stores, Inc. v. Lindley* (1983), 5 Ohio St.3d 213.

The facts of the instant matter are set forth in the commissioner's final determination, which indicates:

“Claimant seeks refund of sales tax associated with items leased or sold to Efficient Channel Coding, Inc. Claimant contends the transactions were exempt from taxation and provided a blanket certificate of exemption. This exemption certificate was timely dated. However, it failed to specify a reason that the sales were not legally subject to the tax as required by R.C. 5739.02(B). The certificate listed the reason for exemption as ‘Equipment primarily used in Research and Development.’ However, the statute does not exempt all equipment used in research and

development. Only *qualified research and development equipment* is eligible for exemption from taxation pursuant to R.C. 5739.02(B)(43)(i), formerly R.C. 5739.01(E)(11). According to R.C. 5739.01(HH), ‘qualified research and development equipment’ is defined as ‘*capitalized* tangible personal property, and leased personal property that would be *capitalized* if purchased, used by a person primarily to perform research and development.’ (Emphasis added.) Only capitalized or capitalizable equipment is exempt, expensed research and development equipment is not eligible for exemption. The statute contains no exemption for generic ‘equipment primarily used in research and development.’ Therefore, the language used in the blanket certificate of exemption failed to specify a statutory reason for exemption. Consequently, the certificate is not valid and the tax is presumed to apply unless the exempt nature of the transactions can be established.” (Emphasis sic.)

Although the appellant was given an opportunity to provide proof that the equipment in question qualified under the statute and to obtain a letter of usage, no information was presented to the commissioner. The commissioner’s office also contacted the consumer directly and asked for information concerning the equipment in question; however, nothing was presented. As a result, the exempt nature of the transaction was not established, and it was presumed that the tax applied and, accordingly, it was found that there was no basis for a refund. As such, appellant’s claim was denied.

Because only certain types of research and development equipment can qualify for exemption from sales tax, it was incumbent upon appellant to provide the commissioner with evidence that the equipment qualified. By not providing such information to the commissioner and further, by not appearing before this board to

offer evidence or testimony, appellant has not met its burden,<sup>1</sup> and, accordingly, this board finds that the Tax Commissioner's findings were reasonable and lawful. It is the decision and order of the Board of Tax Appeals that the decision of the Tax Commissioner must be and hereby is affirmed.

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<sup>1</sup> Arguably, appellant has conceded its position with regard to the commissioner's final determination. Specifically, it indicated in correspondence to this board that the company would not appear at a hearing and it "accepts the State of Ohio denial regarding \*\*\* [the] claim for refund."