ALABAMA TAX TRIBUNAL

FOP RANGE, INC., §
Taxpayer, §
DOCKET NO. S. 19-788-LP
v. §
STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

This appeal involves a final assessment of State sales tax entered by the Alabama Department of Revenue ("the Revenue Department" or "the Department") against FOP Range, Inc. ("the Taxpayer"), for the period July 1, 2015, through June 30, 2018. A hearing was conducted on February 5, 2020. Vicki and Jon Grigsby represented the Taxpayer. Assistant Counsel Hilary Parks represented the Alabama Department of Revenue.

FACTS AND PROCEDURAL HISTORY

The Taxpayer operates a shooting range in Pleasant Grove, Alabama, with seven outdoor firing ranges. When the facility first opened, Mr. Grigsby intended it to be a private shooting range or training facility. He later modified the Taxpayer's business model to include a single, daily-access shooting range (the "Day Shooter Range"). Individuals who wanted to use that range were required to fill out a "range membership application waiver" form, meet the same admission requirements applied to the Taxpayer's members, and pay a "Public Use Range Fee."

Evidence submitted at the hearing showed the Taxpayer's website expressly stated that its Day Shooter Range was open to "anyone who wants a safe place to shoot" and membership was not required. *See* Revenue Dept.'s Exhibit 2 at 3. Other screenshots revealed that the Taxpayer expressly

distinguished itself from "private gun clubs" that "all have membership requirements" and states, "[h]ere, the only requirements are that you be able to legally possess a handgun and that you are safe while you are there. That's it!" The Taxpayer offers a Day Shooter Range option for people who "want a safe place to shoot" without having to pay for a membership. *See* Revenue Dept.'s Exhibit 4.

According to the website, anyone who chooses this option can either pay a Public Use Range Fee and have access to the Taxpayer's Day Shooter Range or join with an annual membership and have access to all of its facilities. *See* Revenue Dept.'s Exhibit 4.

The Revenue Department audited the Taxpayer for the period at issue and stated that the Taxpayer maintained exceptional records. However, the examiner determined that the gross receipts from both the membership fees and the Public Use Range Fees were subject to the gross receipts sales tax under § 40-23-2(2), Ala. Code 1975, and a Preliminary Assessment was issued to the Taxpayer.[1]

After further discussion between the parties, the Department determined that the membership fees were not subject to sales tax but maintained that the Public Use Range Fees were subject to sales tax. A Final Assessment was issued on the gross receipts the Taxpayer derived from its Public Use Range Fees.[2] The Taxpayer timely appealed the Final Assessment to the Tax Tribunal.

LAW AND ANALYSIS

Section 40-23-2(2), Ala. Code 1975, levies a gross receipts sales tax on any taxpayer "engaged … within this state in the business of conducting or operating places of amusement or entertainment" that are open to the public and provides a long and varied list of places at which gross

[1]No penalties were assessed.

[2]Once again, no penalties were assessed.

sales receipts are subject to the tax. The statute also states that the tax applies to "any other place at which any exhibition, display, amusement, or entertainment is offered to the public or place or places where an admission fee is charged." § 40-23-2(2), Ala. Code 1975.

The Administrative Law Division, predecessor of the Tax Tribunal, ruled that only proceeds derived from that part of a taxpayer's business that is open or offered to the public are subject to the tax. *See generally, 2MC, Inc. v. State of Alabama*, Docket S. 07-587 (Admin. Law Div. 3/11/2008).

"Fees and dues paid by members to belong to a private club are not derived from places of public amusement, and thus are not subject to the tax." *Cypress Lakes Golf & Country Club, Inc. v. State of Alabama*, Docket S. 06-174 at 5 (Ala. Law Div. 1/11/2007). For sales tax purposes, even if a taxpayer's membership dues and taxable proceeds are placed in a single fund, that does not change the fact that those proceeds were originally derived from separate and distinct sources—i.e., membership dues and admission fees. *See State of Alabama v. Craft Development Corp.*, Docket S. 91-142 (Admin. Law Div. 10/22/1991). "Only the gross receipts derived from such [public] business should be taxed." *Craft Dev.*, Docket S. 91-142 at 1. In addressing the distinction between a private club and a facility open to the public, the Administrative Law Division recognized that a club which offers memberships may still be operating as a public facility where it allows nonmembers to use its facilities an unlimited number of times without restriction. *See, generally, Rigdon, Inc. v. State of Alabama*, Docket S. 02-337 (Admin. Law Div. 10/30/2002).

In the present case, the Taxpayer argues that its Daily Use Range Fees are not subject to the tax under § 40-23-2(2), Ala. Code 1975, because the Taxpayer does not operate as a "public place"

but operates instead as a "members-only" club. According to the Taxpayer, the term "public" was
used in its advertising only as a marketing strategy to attract non-police and was not intended to
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convey that anyone could use its facilities. Mr. Grigsby further explained that he changed the name
of the Public Use Range Fees to "Daily Use Range Fees" after the audit to avoid confusion over the
term "public."[3] The Taxpayer contends that anyone who wants to use its shooting ranges must first
fill out a membership application and meet a specified list of requirements.[4] Even if a person does
not want to join as a member but simply wants to use its Day Shooter Range for a day, the Taxpayer
requires that person to fill out a "range membership application waiver" form and satisfy its list of
admission requirements. The Taxpayer states that, over the years, it has turned away many people
because they did not meet those requirements. Under these circumstances, the Taxpayer argues that
its business is not open to the public and thus not subject to sales tax under § 40-23-2(2), Ala. Code
1975.

The Taxpayer furthered its argument that it was not open to the public by looking to the meaning of the term "public." Section 40-23-2(2), Ala. Code 1975, does not define the term "public." The Taxpayer argues that "public" as defined in Black's Law Dictionary should apply: "Open or available for all to use, share, or enjoy." *Black's Law Dictionary* 1242 (7th ed. 1999). The Taxpayer compared the definition of "general public" which means "most but not all," arguing that it may be open to the "general public" but not to the "public" since it imposes certain admission requirements on customers.

[3]Those fees will hereinafter be referred to as the Daily Use Range Fees.

[4]According to the Taxpayer, to be granted admission to its shooting ranges, a person must: be at least 21 years of age or accompanied by a parent or guardian and have a valid form of identification; have no criminal history; be in the possession of or have the ability to obtain a pistol permit; and be able to legally own firearms.

In Alabama, it is well settled that, "[i]n interpreting a statute, it is the court's duty to ascertain and give effect to the legislative intent as expressed in the words of the statute." *Kimberly-Clark Corporation v. Eagerton*, 445 So. 2d 566 (Ala. Civ. App. 1983); *Winstead v. State*, 375 So. 2d 1207 (Ala. Civ. App.), cert. denied, 375 So. 2d 1209 (Ala. 1979). "We will not read into [a statute]

language the legislature could easily have included had it chosen to do so, but did not." *T.G. v. Houston County Dept. of Human Resources*, 39 So. 3d 1146, 1149 (Ala. Civ. App. 2009) (citing *Ex parte Emerald Mtn. Expy. Bridge*, 856 So. 2d 834, 840 (Ala. 2003); *Noonan v. East-West Beltline, Inc.*, 487 So. 2d 237, 239 (Ala. 1986) ("It is not proper for a court to read into the statute something which the legislature did not include although it could have easily done so."')). Here, the Taxpayer draws a distinction that the Legislature has not made. If the Legislature had intended the term "public" as differentiated from "general public" in the application of sales tax, it would have stated so. But it did not. Thus, we will use the common meaning of "public." Alabama law is clear that the "commonly accepted definition of the term should be applied." *Bean Dredging, L.L.C. v. Alabama Dep't of Revenue*, 855 So.2d 513, 517 (Ala. 2003). As such, we will look to a conventional dictionary rather than a law dictionary. Merriam-Webster defines "public" as "the people as a whole." *Merriam-Webster's Collegiate Dictionary*, 11th ed. 2020. Applying this definition to the circumstances in the present case, I find that the Day Shooter Range is open to the people as a whole despite having certain admission requirements. This finding is buttressed by the statute itself, as it imposes the sales tax on many specific types of establishments that most certainly exclude some people. For example, billiard and pool rooms are likely to exclude minors, opera houses may allow admittance only to those meeting its dress code, and amusement parks may turn away patrons who are too short to safely fit in its rides. *See* § 40-23-2(2), Ala. Code 1975.

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The Taxpayer also argues that its Daily Use Range Fees cannot be subject to sales tax under § 40-23-2(2), Ala. Code 1975, because it is not a place of amusement or entertainment. However, a taxpayer need not be a place of amusement or entertainment in order to be subject to the statute. As noted previously, § 40-23-2(2), Ala. Code 1975, states that the tax applies to "any other place at which any exhibition, display, amusement, or entertainment is offered to the public or place or places where an admission fee is charged." (Emphasis added.) Section 40-23-2(2), Ala. Code 1975, does not define the term "admission fee." Again, it is well settled that when a term is not defined in a statute, "the commonly accepted definition of the term should be applied." *Bean Dredging*, 855 So.2d at 517. The term "admission" is commonly defined as "the act or process of admitting." *Merriam-Webster's Collegiate Dictionary*, 11th ed. 2020. Applying this definition to the Daily Use

Range Fee at issue here, the Taxpayer charged a fee as part of "the act or process of admitting" daily
shooters upon each visit. Thus, that fee is an "admission fee" subject to sales tax under § 40-23-2(2),
Ala. Code 1975.
The final assessment is affirmed. Judgment is entered against the Taxpayer for State sales tax and interest in the amount of $13,523.80. Additional interest is also due from the date the final assessment was entered on May 31, 2019.
This Final Order may be appealed to circuit court within 30 days, pursuant to Ala. Code § 40-2B-2(m).
Entered August 10, 2020.
/s/ *Leslie H. Pitman*
LESLIE H. PITMAN
Associate Tax Tribunal Judge
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lhp:dr
cc: Jon Grigsby
Hilary Y. Parks, Esq.