

BOARD OF TAX APPEALS
STATE OF LOUISIANA
LOCAL TAX DIVISION

BLUE BIRD OF HAPPINESS, LLC, Petitioner

vs.

CADDO-SHREVEPORT SALES AND USE TAX COMMISSION, Respondent

B.T.A. DOCKET NO. L01048

JUDGMENT WITH REASONS


On Joint Motion of the parties and by Order signed by the Board on February 14, 2025, this matter was submitted on the briefs for decision on the Cross Motions for Summary Judgment filed by Blue Bird of Happiness, LLC ("Taxpayer")¹ and the Caddo-Shreveport Sales and Use Tax Commission ("Collector")². In accordance with the attached Reasons for Judgment, the Board now rules as follows:

IT IS HEREBY ORDERED, ADJUDGED, AND DECREED that the Taxpayer's Motion for Summary Judgment be and is hereby GRANTED and the Assessment appealed from is vacated and Taxpayer has no liability to the Collector.

IT IS FURTHER ORDERED, ADJUDGED, AND DECREED that the Collector's Motion for Summary Judgment be and is hereby DENIED.

.JUDGMENT RENDERED AND SIGNED AT BATON ROUGE,
LOUISIANA, THIS 8 DAY OF MAY, 2025.

FOR THE BOARD:



JUSTICE CADE R. COLE³
LOCAL TAX JUDGE AD HOC
LOUISIANA BOARD OF TAX APPEALS

¹ Represented by Donald Lee Brice, Jr. esq.

² Represented by Jennifer P. McKay, esq.

³ On March 10, 2025, Justice Cole resigned from the Board after being elected to the Louisiana Supreme Court, and was appointed ad hoc Local Tax Judge in this matter by on March 11, 2025.

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REASONS FOR JUDGMENT

On Joint Motion of the parties and by Order signed by the Board on February 14, 2025, this matter was submitted on the briefs for decision on the Cross Motions for Summary Judgment filed by Blue Bird of Happiness, LLC (“Blue Bird”)¹ and the Caddo-Shreveport Sales and Use Tax Commission (“Collector”)². The Board now issues the foregoing Judgment for the following reasons:

Background:

Blue Bird is a Louisiana LLC and disregarded entity for federal and state income tax purposes. Blue Bird’s only member is Brenda Evans Kennon (“Kennon”). Kennon formed Blue Bird for the sole purpose of taking title to an aircraft described as a Cessna 525, PA # C02719, Registration N797BK (“Aircraft”). Blue Bird purchased the Aircraft from Textron Aviation, Inc. in Wichita, Kansas on August 29, 2018 for \$4,420,000.00. The Aircraft was then transported to Shreveport and hangered at the Shreveport Regional Airport (“SRA”). Blue Bird purchased the Aircraft for Kennon’s private use. Blue Bird was not and is not engaged in any business activity. On September 27, 2018, Kennon filed a Consumer Use Tax Return (“Return”) with the Louisiana Department of Revenue (“LDR”). With the Return, Kennon paid \$373,490.00 in use tax on the Aircraft.

¹ Represented by Donald Lee Brice, Jr. esq.

² Represented by Jennifer P. McKay, esq.

On August 19, 2020, the Collector issued a Notice of Intent to Assess local use tax on the Aircraft along with penalties and interest. Kennon's CPA initiated a protest hearing in response. Following the protest hearing, the Collector issued a formal Notice of Assessment ("Assessment") to Blue Bird, assessing local use tax on the Aircraft in the amount of \$203,320.00, interest in the amount of \$5,371.93, and penalties in the amount of \$6,630.00, for a total due of \$215,321.93. The Collector maintains that only "individuals" may elect to file the state Consumer Use Tax. Further, the Collector asserts that Blue Bird is a juridical person and not individual. More importantly, the Collector contends that Blue Bird cannot use the Consumer Use Tax Return because it is a "dealer" by virtue of its importation of tangible personal property (the Aircraft) into Louisiana.

Nevertheless, the amount that the Collector now seeks to collect has been reduced from the amount shown in the Assessment, and is detailed in the Collector's Motion for Summary Judgment. The amounts now sought by the Collector are:

| | |
|----------------------|--|
| Sales price: | \$4,420,000.00 |
| Consumer use tax pd: | \$373,490.00 (8.45%) (this was remitted by Mr. And Ms. Kennon) |
| Underpayment | \$26,520.00 (calculated at 9.05%, with a credit for the tax paid to the state) |
| Penalty Due: | \$ 6,630.00 |
| Interest Due: | <u>\$ 4,761.61</u> |
| Total Due: | \$37,911.61 |

Discussion:

The Board must determine whether Kennon is permitted to pay use tax under La. R.S. 47:302(K) on the Aircraft imported into the State of Louisiana for her personal non-business use by Blue Bird. From July 1, 2018, to June 17, 2019, La. R.S. 47:302(K)(5) provided:

The tax levied under this Subsection shall be levied and collected only from vendors who qualify as a "dealer" in this state solely by virtue of engaging in regular or systematic solicitation of a consumer market in this state by the distribution of catalogs, periodicals, advertising fliers,

or other advertising, or by means of print, radio, or television media, including but not limited to television shopping channels, by mail, telegraphy, telephone, computer database, cable, optic, microwave, or other communication system. A vendor who qualifies as a dealer in this state as provided in R.S. 47:301(4) is prohibited from collecting the tax imposed under this Subsection in lieu of collecting the sales and use tax imposed by a political subdivision of this state which tax is remitted directly to the political subdivision.

The quoted provision appears to state that the tax levied by La. R.S. 47:302(K) is to be collected only from vendors, and furthermore only vendors who qualify as dealers solely by virtue of the enumerated activities in the statute. Neither Blue Bird nor Kennon are vendors nor do they engage in activities enumerated in La. R.S. 47:302(K).

Further, the second sentence of La. R.S. 47:302(K)(5) excludes vendors who qualify as dealers under La. R.S. 47:301(4) from paying the use tax under La. R.S. 47:302(K). La. R.S. 47:301(4)'s definition of "use" is exceedingly broad, and would encompass Blue Bird under La. R.S. 47:301(4)(a), which defines dealers to include "[e]very person who imports, or causes to be imported, tangible personal property or digital products from any other state, foreign country, or other taxing jurisdiction for sale at retail, for use, or consumption, or distribution, or for storage to be used or consumed in a taxing jurisdiction." La. R.S. 47:301(4)(a).

However, the exclusion in the sentence of La. R.S. 47:302(K)(5) does not encompass all dealers, but only dealers who are "vendors." As stated above, neither Blue Bird nor Kennon are "vendors,"³ La. R.S. 47:305(K)(5) does not prevent a consumer from remitting use tax to the LDR on the use of tangible personal property that the consumer purchased in another state tax free and subsequently imported into Louisiana.

³ The term is not defined in the sales tax statutes or LDR's regulations. Merriam Webster's Dictionary defines vendor as "one that vends: seller." *Merriam-Webster.com Dictionary*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/vendor>.


The purpose of the Consumer Use Tax Return is to provide a mechanism for taxpayers to remit use tax. Reading the first sentence of La. R.S. 47:302(K)(5) to limit the Consumer Use Tax Return to vendors would completely defeat this purpose. The Consumer Use Tax Return, which has been used by Louisiana taxpayers and the Department for thirty years.⁴ Thus, in addition to the resulting absurdity, accepting Collector's position would upend longstanding administrative interpretation of La. R.S. 47:302(K). The Board will not do so in this case, which is presented without argument and with no affidavit or evidence offered by the Collector in support of their Motion for Summary Judgment.

Conclusion:

For the foregoing reasons, the Board will grant the Motion for Summary Judgment filed by Blue Bird and deny the Motion for Summary Judgment filed by the Collector. The taxable event at issue was the importation of the Aircraft into Caddo Parish for use therein. Neither Blue Bird, a disregarded entity, nor Kennon, its sole member, are vendors. Kennon did not violate La. R.S. 47:302(K)(5) by paying tax on the Aircraft on her Consumer Use Tax Return. Accordingly, Collector is not entitled to any additional tax and the Assessment appealed from will be vacated.

BATON ROUGE, LOUISIANA, THIS 8 DAY OF MAY, 2025.

FOR THE BOARD:



JUSTICE CADE R. COLE⁵
LOCAL TAX JUDGE *AD HOC*
LOUISIANA BOARD OF TAX APPEALS

⁴ La. R.S. 47:301(K) was first enacted by 1994 Act 18.

⁵ On March 10, 2025, Justice Cole resigned from the Board after being elected to the Louisiana Supreme Court, and was appointed ad hoc Local Tax Judge in this matter by on March 11, 2025.