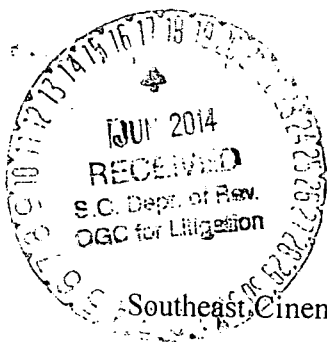


FILED

JUN 16 2014

SC ADMIN. LAW COURT



**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

Southeast Cinema Entertainment, Inc.,)
)
Petitioner,)
)
v.)
)
South Carolina Department of Revenue,)
)
Respondent.)

Docket No. 12-ALJ-17-0390-CC

**ORDER DENYING
MOTION FOR
RECONSIDERATION**

This matter is before the South Carolina Administrative Law Court (“the ALC” or “the Court”) pursuant to a Request for a Contested Case Hearing filed by Southeast Cinema Entertainment, Inc. (“Petitioner”) challenging the South Carolina Department of Revenue’s (“Respondent’s” or “the Department’s”) denial of a refund request for sales tax paid on the purchase of cinema equipment (“the system”) from IMAX Corporation (“IMAX”). In its decision, the Department determined Petitioner owed sales taxes on the initial purchase price of the system and on “additional payments” related to the purchase of the system. Petitioner contested the applicability of sales tax to the purchase price of the system and to the additional payments. The parties filed cross motions for summary judgment as to both issues. In an order dated May 28, 2014, this Court denied Petitioner’s motion for summary judgment as it related to the taxes paid on the initial purchase price, but granted Petitioner’s motion for summary judgment regarding the sales tax paid on the additional payments. Accordingly, this Court simultaneously granted the Department’s motion for summary judgment as to the sales taxes paid on the initial purchase price and denied the Department’s motion for summary judgment in regards to the sales tax on the additional payments.

Subsequently, on June 9, 2014, the Department filed a motion requesting the Court to reconsider its decision with respect to the applicability of sales taxes to the “additional payments.” The Department contests this Court’s determination that the additional payments were not part of the gross proceeds of sales, and therefore not subject to sales tax, arguing the additional payments were part of, or at the least incident to, the initial purchase of the system. Moreover, the Department contests the Court’s finding that the additional payments were non-

taxable box-office fees, and it maintains Petitioner did not meet its burden of proof to show the additional payments were box office fees. Having considered the facts of this case and the Department's Motion for Reconsideration, the Court finds that its May 28, 2014 Order must stand.


The Department argues the additional payments are subject to sales tax because the payments fall within the category of "any other expenses" under the statutory definition of "gross proceeds of sale." See S.C. Code Ann. § 12-36-90(1). I find the additional payments at issue do not fall within the category of "any other expenses." See id. The contract for the system states: "Subject to the terms and conditions contained herein, IMAX hereby sells to Client and Client hereby purchases from IMAX the System," and "[Petitioner] shall pay US\$1,150,000 as purchase price for the system (the "Purchase Price"), which shall be payable as IMAX directs." (emphasis added). Therefore, the sale was complete upon the payment of \$1,150,000. The only parsing of the purchase price is the contract's provision allowing for installment payments; there is no indication the purchase price was subject to additional, indefinite "financing payments" as the Department styles them. Upon the payment of the last installment, to equal a total payment \$1,150,000.00, I find the sale was completed, and the purchase price constituted the entirety of the gross proceeds of sale.

Further, I believe this case is distinguishable from Myers Arnold. See 285 S.C. 303, 305, 328 S.E.2d 920, 922 (Ct. App. 1985) (holding that under the definition of "gross proceeds of sale," the lay away fees constituted the price for a service incident to the purchase of the layaway item, which was not deductible for the purpose of administering the sales tax). In Myers Arnold, the lay away fees were charged before, and were directly related to, the purchase of the lay away item. See id. Further, the lay away fees ceased upon the completed sale. See id. Here, the sale is already completed when the additional payments become due, and, until the contract is terminated, the additional fees are theoretically indefinite. Thus, here, there is not a nexus between the purchase price and the additional payments, which is in contrast to the clear nexus between the lay away fees and the purchase price of the lay away item in Myers Arnold.

Finally, I find the Petitioner met its burden to show the preponderance of the evidence supports characterizing the additional fees as box office payments based on the language of the contract and for the reasons stated in the May 28, 2014 order.

THEREFORE, IT IS HEREBY ORDERED that Petitioner's Motion for Reconsideration is **DENIED**.

AND IT IS SO ORDERED.


SHIRLEY C. ROBINSON
Administrative Law Judge

June 16, 2014
Columbia, South Carolina

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June 2014
Felicia Henderson