



FILED

JUL 08 2021

Georgia Tax Tribunal Administrator

IN THE GEORGIA TAX TRIBUNAL  
STATE OF GEORGIA

QUAD/GRAPHICS, INC.

Petitioner,

v.

FRANK M. O'CONNELL,  
in his Official Capacity as  
Commissioner of the GEORGIA  
DEPARTMENT OF REVENUE,

Respondent.

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ADMINISTRATIVE APPEAL

DOCKET NO. 1823543

**FINAL DECISION**

The matter before the Tribunal concerns an appeal of a sales and use tax assessment issued by Respondent, Frank M. O'Connell in his official capacity as Commissioner of the Georgia Department of Revenue (the "Department"), to Petitioner, Quad/Graphics, Inc. ("Quad") for the period July 1, 2009, to December 31, 2012 (the "Audit Period"). The parties stipulated that the only arguments at issue are those concerning whether the Department's assessment of the transactions printed and shipped from outside Georgia and into Georgia violated the Due Process Clause and the Commerce Clause of the United States Constitution ("the Constitutional Arguments"). (Joint Stipulation of Facts, ¶ 20.)

Rule 21 of the Georgia Tax Tribunal Rules of Procedure provides that, "a Tribunal Judge is not authorized to resolve constitutional challenges," but that "the Tribunal Judge may, in the Tribunal Judge's discretion . . . make findings of fact relating to such challenges." See Ga. Comp. R. & Regs. 616-1-3-.21. Accordingly, the Tribunal does not have the jurisdiction to resolve the issues presented in the Constitutional Arguments. Because the Constitutional Arguments are the only ones at issue before the Tribunal, the Respondent's assessment must be **AFFIRMED**, as the Tribunal cannot consider or decide whether Respondent's assessment violated either the Due Process Clause and/or the Commerce Clause of the Constitution.

Nonetheless, as provided for by Rule 21, the Tribunal may make findings of fact. Thus, following discussion with the parties and at their urging, the Tribunal adopts the following findings of fact, prepared jointly by the parties, with respect to the above-captioned dispute.

1. Quad is a commercial printer headquartered in Sussex, Wisconsin.
2. Quad owns and operates commercial printing facilities throughout the United States, including Georgia.

3. Quad owned and operated a commercial printing facility in Georgia throughout the Audit Period (the "Georgia Facility").

4. Quad received orders from its customers (individually, a "Customer" and collectively, the "Customers") to prepare printed materials during the Audit Period.

5. Quad received and processed print jobs from its Customers located throughout the United States, including Georgia.

6. The Customers provided Quad with mailing lists or similar documentation pertaining to the recipients of the printed materials (individually, a "Recipient" and collectively, the "Recipients").

7. During the Audit Period, the Recipients of the printed materials were located throughout the United States, including Georgia.

8. Quad entered into a contract with each Customer that outlined the rights and obligations of the parties (individually, a "Contract" and collectively, the "Contracts").

9. With respect to the Contracts relating to Customers on Exhibit A attached hereto, such Contracts were negotiated, approved by Quad, and executed outside Georgia.

10. The Contracts expressly provided that legal title to the printed materials transferred from Quad to each Customer at Quad's shipping dock or when delivered from Quad to a common carrier outside for shipment.

11. With respect to the Contracts relating to Customers on Exhibit A attached hereto, both legal title and possession to the printed materials transferred from Quad to such Customers outside Georgia. The Contracts provided that, at the Customer's direction, Quad send the printed materials to residents of Georgia. All printed material at issue in this appeal was sent via common carrier to residents of Georgia.

12. The commercial printing jobs completed by and shipped from the Georgia Facility are not at issue in this case.

13. Quad was audited by the Department for sales and use taxes for the Audit Period.

14. On or about October 13, 2016, Quad was issued a Notice of Proposed Assessment (the "Proposed Assessment") relating to a sales and use tax deficiency for the Audit Period.

15. Quad filed a timely protest to the Proposed Assessment (the "Administrative Protest").

16. The Administrative Protest argued that (1) several categories of transactions were either exempt or otherwise excludable from Georgia sales and use tax (the "Statutory Arguments") and (2) the Department's assessment of the transactions printed and shipped from outside Georgia

and into Georgia violated the Due Process Clause and the Commerce Clause of the United States Constitution (the "Constitutional Arguments").

17. By letter dated November 7, 2017, the Department responded to the Administrative Protest by reducing the amount of the Proposed Assessment.

18. By letter dated November 28, 2017, the Department issued an "Official Assessment and Demand for Payment" to Quad relating to sales and use taxes for the Audit Period in the total amount of \$460,073.70 (the "Assessment").

19. The Assessment included \$269,184.90 of underreported sales and use tax and \$190,889.61 in accrued interest through December 20, 2017. All of the commercial printing jobs and printed materials that are subject of the Assessment were sent to Recipients located in Georgia.

20. Quad filed a timely appeal with the Tax Tribunal challenging the Assessment.

21. Without consideration of the Constitutional Arguments, Quad concedes that Quad's Georgia sales and use tax liability for the Audit Period is \$128,777.44 (the "Conceded Liability") plus any applicable accrued interest. The Conceded Liability is calculated on Exhibit A attached hereto as: (1) the sales tax amounts for customers highlighted in RED and (2) 47.839773% of the sales tax amounts for customers highlighted in YELLOW. Quad concedes any and all remaining Statutory Arguments relating to the application of Georgia's sales and use tax laws to these transactions, including that both Quad and its Customers fall within the definition of "Dealer" in O.C.G.A. § 48-8-2(8).

22. The parties stipulate that only the Constitutional Arguments are at issue with respect to the sales and use tax liability conceded by Quad and relating to the customers listed in Exhibit A.

Because the parties have stipulated that only the Constitutional Arguments are at issue, and because the Tribunal lacks jurisdiction to decide constitutional questions and therefore to set aside Respondent's assessment on constitutional bases, this matter must be **AFFIRMED**.

**SO ORDERED**, this 8th day of July, 2021.



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**LAWRENCE E. O'NEAL, JR.**  
**CHIEF JUDGE**  
**GEORGIA TAX TRIBUNAL**