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Department of Revenue
Montgomery, Alabama 36132

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ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 94-011

This document may not be used or cited as precedent. Code of Alabama 1975, §40-2A-5(a).

TO: Representative
Company A

FROM: Commissioner of Revenue (Acting)
Alabama Department of Revenue

DATE: September 26, 1994

RE: Will subscriptions of an electronic newsletter be subject to Alabama sales and use tax or the Alabama utilities privilege or license tax.

FACTS

The facts as represented by Company A are as follows:

The taxpayer is the publisher of Company A newspaper. In order to expand its product line and create a new source of revenue, Company A is starting an electronic newsletter called "Alabama Hotline" available by modem on computer screens, or by facsimile transmitted by a facsimile machine of the taxpayer to a facsimile machine of the subscriber. Eventually, the electronic newsletter may be published by a wholly owned subsidiary to be created for this purpose, rather than by the taxpayer itself.

In recent years, the newsmedia has experimented with new forms of electronic journalism that is now feasible with the advent of devices such as the personal computer and facsimile machine. Company A has the existing capacity to publish the Alabama Hotline which is expected to be generally eight pages. Many of the news briefs in the electronic newsletter will be generated from Company A newspaper stories. Other items will be obtained from the Birmingham News and Huntsville Times, which belong to the same newspaper chain as Company A. Still other items will be obtained from the Associated Press. A copy of the first edition of the Alabama Hotline is attached as an exhibit.

The Alabama Hotline is being marketed to lobbyists, public relations people, business people, and law firms. The month of August is a trial period during which the electronic newsletter is being made available to prospective subscribers at no obligation. Later in the month, recipients of the newsletter

will receive an invoice and must decide whether they wish to become paying subscribers. The cost of a subscription is $1,000.00 annually or $275 quarterly.

ISSUES

Whether the sale of subscriptions of an electronic newsletter is subject to the Alabama sales and use tax or the Alabama utilities privilege or license tax?

LAW AND ANALYSIS

Code of Alabama 1975 §40-23-2(1) (1994 Supplement), provides in pertinent part that:

> There is hereby levied, in addition to all other taxes of every kind now imposed by law, and shall be collected as herein provided, a privilege or license tax against the person on account of the business activities and in the amount to be determined by the application of rates against gross sales, or gross receipts, as the case may be, as follows:
>
> > Upon every person, firm, or corporation, (including the State of Alabama and its Alcoholic Beverage Control Board in the sale of alcoholic beverages of all kinds, the University of Alabama, Auburn University, and all other institutions of higher learning in the state, whether the institutions be denominational, state, county, or municipal institutions) engaged or continuing within this state, in the business of selling at retail any tangible personal property whatsoever,... an amount equal to four percent of the gross proceeds of sales of the business except where a different amount is expressly provided herein.

In Alabama "[s]ales of Newspapers are subject to sales tax. . . ." Regulation No. 810-6-1-.110.01 Newspapers, Sales of. However, here, Company A proposes to expand its product line and create a new source of revenue by selling a newsletter by electronic transmission, available by modem on computer screens, or by facsimile to subscribers and which may or may not be printed onto paper at the subscriber's office. The above statutory provision does not include electronically transmitted data as tangible personal property.

As to Alabama's Utility Gross Receipts Tax, the Code specifically provides pursuant to Ala. Code §40-21-82(b)(1993), in pertinent part as follows:

> "There is hereby levied a privilege or license tax against every utility furnishing telegraph or telephone services in the State of Alabama. The amount of said tax shall be determined by the application of rates against gross sales or gross receipts, as the case may be, from the furnishing of such services in the State of Alabama. The tax shall be computed monthly with respect to each person to whom such services are furnished, in accordance with the following table:"

Section 40-21-80 of the Code defines person, utility, and utility services, respectively as follows:

> "PERSON. An individual, firm, copartnership, association, trust, receiving corporation, or other entity, and shall specifically include the State of Alabama, ... as well as every private or nonpublic entity."
>
> "UTILITY. Every person regularly engaged in furnishing utility services to another person in the State of Alabama."
>
> "UTILITY SERVICES. Electricity, domestic water, natural gas, telegraph services and telephone services; . . ."

By definition Company A does not qualify as a utility in that it is not regularly engaged in furnishing utility services to another person in the State of Alabama as prescribed in the above statutory provisions.

HOLDING

Based upon the facts as stated by Company A, Alabama law as it exists today does not embrace electronically transmitted data as tangible personal property. Therefore, Company A would not be subject to Alabama sales and use tax for the sale of subscriptions of an electronically transmitted Newsletter.

Further, it is my opinion based on the above facts and pursuant to §40-21-80 et seq., Company A is not a utility and is not furnishing telephone services when it transmits data electronically as described herein. Therefore, it is not

subject to the privilege or license tax levied against every utility furnishing utility services in the State of Alabama.

GEORGE E. MINGLEDORFF III

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