



State of Alabama Department of Revenue

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ALABAMA DEPARTMENT OF REVENUE REVENUE RULING 94-013

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Code §40-2A-5(a) (1993 Replacement Volume).**

TO:

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

DATE: January 6, 1995

RE: Company's subjectivity to Alabama sales tax on
materials purchased for fabrication and then sold to
another company.

Applicability of State sales tax when a company's
fabricated goods are sold to another company which
takes possession outside the State of Alabama.

ISSUES AND FACTS

The facts as represented by Requestor are as follows:

Company "A" has a fabrication shop located in Alabama. Company "B" is in the business of fabricating and erecting steel plate storage facilities. Company "B" is presently leasing Company "A"'s facility and has for several years. Currently, Company "A" is proposing to get back into the business of fabricating tanks and tank components which will be sold to Company "B", acting in the capacity of a contractor, for erection at the appropriate location. Company "B" will erect the tanks within Alabama, as well as out of state.

The issues are as follows:

1. Whether Company "A" is subject to Alabama sales tax on materials it purchases for fabrication and then sells to Company "B"?

2. Which state's sales tax applies when Company "A" sells the fabricated goods to another company which takes possession outside the State of Alabama?

LAW AND ANALYSIS

ISSUE I

Sales and Use Tax Regulation 810-6-1-.80 Ingredient or Product Manufactured or Compounded for Sale, provides the following:

(1) Any material purchased by a manufacturer which does in fact become a part of his final product regardless of his intent is purchased at wholesale, tax free. Since the facts leading to such a determination are generally within the peculiar knowledge of the taxpayer-manufacturer, the burden of proving that such materials do in fact become an ingredient or component part of the finished product must be carried by the manufacturer.

Therefore, Company "A", under the facts presented by the Requestor, would be a manufacturer and should purchase all materials tax free which become a component part of the fabricated tanks or tank components.

ISSUE II

Sales & Use Tax Regulation 810-6-3-.35.02 Interstate Commerce, Sales in, states as follows:

(1) Sales are considered in interstate commerce and cannot be taxed by the Alabama sales tax law where:

(a) The seller is required by the sales agreement to deliver the goods outside the state in his equipment, or

(b) The seller is required by the sales agreement to deliver the goods to a common carrier or to the United States Post Office for transportation outside the state at the seller's direction either F.O.B. point of origin or F.O.B. point of destination, or

(c) The seller is required by the sales agreement to deliver the goods outside the state by the use of an independent trucker hired by him.

(2) Property is not sold in interstate commerce when the buyer takes actual possession of the goods in this state or when an agent of the buyer accepts delivery for him to make delivery outside the state at the buyer's direction.

Accordingly, sales made to Company "B" or any other contractor or consumer, which are delivered outside the State of Alabama would be sales in interstate commerce with no Alabama tax being due. Tax should be collected by Company "A" on all sales to Company "B" and other contractors when delivered to a purchaser within the State of Alabama. If Company "A" is qualified or required to collect tax in the state where delivered, it should do so. If not, Company "B" would owe consumer's use tax directly to the state where delivered and erected.

HOLDING

Based upon the particular facts of this case, under the new proposed arrangement, Company "A", as a manufacturer, would be able to purchase all materials tax free which become a component part of the fabricated tanks or tank components.

Also under the new proposed arrangement, tax would only be due Alabama when the buyer or purchaser takes actual possession of goods in this State or when an agent of the buyer accepts delivery for him to make delivery outside the State. Sales which are delivered outside the State of Alabama would be sales in interstate commerce with no Alabama tax being due.

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