

ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 01-006

This document may not be used or cited as precedent. Ala. Code §40-2A-5(a) (1998 Replacement Volume).

TO:

FROM: Commissioner of Revenue
Alabama Department of Revenue

DATE: July 3, 2001

RE: Applicability of Alabama sales and use tax to proposed fees to be implemented by Corporation "A".

FACTS

The limited facts as represented by the Requestor are as follows:

Corporation "A" is a major wholesaler and distributor of medical and surgical supplies, primarily to hospitals and major medical centers. Corporation "A" is currently considering implementing various fees for services rendered to its customers. When billing each of these fees the amount will always be separately stated. Corporation "A" is requesting an opinion from the Department regarding the taxability of the following fees:

1. Consulting Services – Corporation "A" provides these services to hospitals and medical centers to evaluate and provide an analysis on how to set up their supply house, storeroom, and/or warehouse for the maximum efficiency.
2. Employee Outsourcing – These charges are for providing short-term or long-term temporary employee services, in which the Corporation "A" employee is supervised by the customer. The services provided include but are not limited to administration, warehouseman and stock clerk, etc.
3. Parking – Corporation "A" leases/rents a portion of its parking lot to a neighboring company.

4. Telephone Coverage – This charge is for the cost of having a person on call 24 hours a day for emergency orders.

5. Restocking fees – These charges are to cover the time and expense in returning goods to Corporation “A’s” resale inventory when the buyer has not used the goods in a way that decreases their value.

6. Reserve Inventory Fee – These are charges Corporation “A” bills a customer to maintain a set quantity of items in their inventory, pending the customer’s purchases. This is to assure that critical items will be in stock and immediately available for shipping to that customer. The title to this inventory remains in the custody of Corporation “A” until purchased by the customer.

7. Sales Tracing Fees – These charges are for compiling data on a customer’s purchases from Corporation “A’s” information system and generating various reports. These reports are requested by the customer in order to analyze their spending patterns, and identify items that are not purchased under contract so that they may reduce excess spending. This information is transmitted either electronically or via paper.

ISSUE

Whether the proposed fees outlined by Corporation “A” will be subject to the Alabama sales & use tax?

LAW AND ANALYSIS

1. The consulting services are strictly services and therefore are not subject to the Alabama sales and use tax.

2. Employee outsourcing is strictly a service and therefore is not subject to the Alabama sales and use tax.

3. The rental of Corporation “A’s” parking lot constitutes a rental of real property, and is therefore not subject to the Alabama sales and use tax.

4. Telephone coverage is a service and is therefore not taxable under the Alabama sales and use tax.

5. Sales and Use Tax Rule 810-6-1-.147. Returned Merchandise states the following:

(1) When property is returned by the purchaser and the seller refunds the full amount paid, there is no sale and the sales price of such returned property is not to be included in the gross proceeds of sales.

(2) When property is returned and a part, but not all, of the sales price is refunded, the full sales price is to be included in the gross proceeds of sales. This would include but not be limited to property returned and a restocking fee is charged before refunding the balance of the purchase price.

(3) When the sale is on credit and less than the amount paid is refunded, the measure of the tax is the total amount of the sale.

See also, Ala. Code §40-23-1(a)(6) and State v. Leary & Owens Equipment, Inc., 304 So.2d 604 (Ala. Civ. App. 1974). Therefore, if Corporation "A" charges restocking fee, and does not refund the full purchase price, the entire amount of the sale is taxable.

6. Based on the limited information provided by the Requestor, the reserve inventory fee appears to be a prepay transaction. As such, this fee is taxable to the customer as a gross receipt in accordance with Ala. Code §40-23-1(8).

7. The sales tracing fees are services, and therefore are not taxable under the Alabama sales and use tax.

HOLDING

The consulting services, employee outsourcing, telephone coverage, and sales tracing fees, are services and therefore are not subject to the Alabama sales and use tax, unless these services are incidental to the sale of tangible personal property. The rental of the parking lot involves a rental of real property, and is therefore not subject to the Alabama sales and use tax. The restocking fees are taxable, as the price of the goods returned will not be refunded in full to Corporation "A's" customers, in accordance with Sales and Use Tax Reg. 810-6-1-.147 and State v. Leary & Owens Equipment, Inc., 304 So.2d 604 (Ala.Civ. App. 1974). The reserve inventory fee constitutes a prepay transaction and therefore the cost of the items is taxable to Corporation "A's" customers in accordance with Ala. Code §40-23-1(8).

MICHAEL PATTERSON, Commissioner
Alabama Department of Revenue

MP:MJM:sb

