

ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 00-002

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: May 16, 2000

RE: Applicability of Alabama Sales and Use Tax to materials stored and wet-out at Taxpayer's planned wet-out facility.

ISSUES AND FACTS

The facts as represented by the Requestor are as follows:

Corporation "X" is a provider of pipeline rehabilitation and improvement services. Their primary technology is the process of cured-in-place, non-disruptive pipeline rehabilitation. The Corporation "X" liner tube material is manufactured by Corporation "X" at manufacturing facilities located in State "Y" and State "Z".

The Corporation "X" tube material is shipped via common carrier from the manufacturing facilities to a Corporation "X" wet-out facility located in close proximity to the job site where the Corporation "X" tube will be installed. The tubing is stored at the wet-out facility until needed at the job site. A typical wet-out facility may have 3 days to 2 months supply of tube on hand, depending on the timing of jobs. At these wet-out facilities, the tube is cut to the required length and impregnated with resins and then packed in ice and shipped via Corporation "X" refrigerated trucks to the job site. At the job site, the resin-filled Corporation "X" tube is inserted into a deteriorated pipe. Hot water is circulated through it curing the resin and forming a new Corporation "X" pipe over the existing deteriorated pipe.

Corporation "X" currently does not have a wet-out facility in Alabama. Corporation "X" is contemplating opening a wet-out facility in Alabama that will store the tubing (liner

material) and resins and perform the wet-out process prior to shipment to the job site. The wet-out facility in Alabama will store materials from approximately 3 days to 2 months, depending on need, for various pipeline rehabilitation projects.

The materials (tubing and resins) that are stored and subsequently wet-out at the Alabama wet-out facility may be utilized by Corporation "X" in pipeline rehabilitation projects in Alabama or outside Alabama. The materials (tubing and resins) stored and wet-out at the wet-out facility in Alabama may be used in pipeline projects by Corporation "X" where the customers could be federal, state and/or local governments (in Alabama or outside Alabama). The majority of contacts between Corporation "X" and their customers call for a "lump-sum" (i.e. non-itemized) billing.

ISSUES

(1) Does Alabama allow a "temporary storage" exclusion from Alabama use tax on the cost or retail value of materials shipped from the manufacturing facilities (located in State "Y" and State "Z") to the wet-out facility in Alabama for storage, where the ultimate destination of the materials (tubing and resins) will be in projects located outside Alabama?

(2) Does the wet-out process constitute a taxable use by Corporation "X" in Alabama and therefore subject the tubing and resins to Alabama use tax on all materials affected during the wet-out process, even those for ultimate use in out-of-state projects?

(3) Is the Alabama sales or use tax exemption for water pollution control available to Corporation "X" on the cost or retail value of materials brought in to the Alabama wet-out center for ultimate use in waste water, storm sewers or other water pollution control projects in Alabama? If so, what documentation is Corporation "X" required to maintain for their records in support of this exemption?

(4) Is a "pass through" sales or use tax exemption available from governmental agencies to Corporation "X" on the cost or retail value of materials brought into the Alabama wet-out center which will be ultimately used on a pipeline project (located in Alabama) where the buyer is a tax exempt governmental agency?

LAW AND ANALYSIS

(1) Ala. Code §40-23-60(7) defines storage to mean, "[a]ny keeping or retention in this State for any purpose except sale in the regular course of business or subsequent use solely outside this state...." In order for a "temporary storage" exclusion from Alabama use tax, "records must reflect that it was the intent of the purchaser to use the property in another state at the time of its coming to rest in Alabama," and that the property was actually removed from Alabama. See Sales and Use Tax Reg. 810-6-5-.23. Therefore,

Alabama does allow a "temporary storage" exclusion from Alabama use tax if the above conditions are met.

(2) The wet-out process consists of taking the Corporation "X" tube liner of material from storage, measuring and then coding it to length. The liner material is then impregnated with special resins and immediately packed in ice and shipped to a job site, either in Alabama or an out-of-state job site. At the job site, the Corporation "X" tubing is installed in the deteriorated pipe. Hot water is circulated through the tubing, which causes the resins to cure, and a new Corporation "X" pipe is formed. The process of measuring, cutting and impregnating the resins to the liner material before the liner material is shipped outside Alabama is not sufficient activity to prevent Corporation "X" from claiming the temporary storage exemption found in Ala.Code §40-23-60(7), as it is the intent of Corporation "X" to use the liner material out-of-state.

(3) Ala. Code §40-23-62(18) provides an exemption from Alabama sales and use tax on the storage, use or consumption in Alabama of all devices or facilities and identifiable components thereof or materials for use therein, used or placed in operation primarily for the control, reduction or elimination of air or water pollution, as well as, the storage, use or consumption of all identifiable components of or materials used to build structures primarily for the control, reduction or elimination of air or water pollution.

Ala. Code §11-54-88(c)(2) defines a pollution control facility as "[a]ny land, building, structure, machinery or equipment having to do with or designed for or the end purpose of which is the control, reduction, abatement or prevention of air, noise, water or general environmental pollution, including, but not limited to, ... any water management facility, water purification facility, waste water collecting system, waste water treatment works, or solid waste disposal facility."

Based on the above, the water pollution control exemption for Alabama sales and use tax exists on the cost of identifiable components or materials Corporation "X" stores at the Alabama wet-out center and are used primarily for the control, reduction, or elimination of water pollution. The documentation required to be maintained by Corporation "X" for the records in support of this exemption is any documentation showing that those identifiable components and materials stored by Corporation "X" are indeed used in waste water, storm sewers or other water pollution control projects in Alabama. Specially, job cost files including a record of the amount of materials which went into each project.

(4) Sales and Use Tax Reg. 810-6-1-.46(2) provides that, "[c]ontractors or builders may not claim any immunity or exemption from the sales or use tax laws on account of property purchased and used in connection with contracts with the federal, state, county or city government. (Citations omitted.) Therefore, based on this regulation, there is no "pass-through" sales or use tax exemption available on materials consumed

by Corporation "X" in the performance of a contract with the federal, state, county or city governments. State of Alabama v. King and Boozer, 314 U.S. 1, 62 S.Ct. 43 (1941).

HOLDING

(1) Alabama does allow a temporary storage exemption from use tax on materials that will be used by Corporation "X" in projects located outside Alabama provided it was the intent of the purchaser to use the property in another state at the time of it coming to rest in Alabama," and that the property was actually removed from Alabama. See Sales and Use Tax Reg. 810-6-5-.23.

(2) Corporation "X's" wet-out process of measuring, cutting and resin-impregnating the Corporation "X" liner materials does not constitute a taxable use in Alabama, as it is not sufficient activity to prevent Corporation "X" from claiming the temporary storage exemption found in Ala. Code §40-23-60(7).

(3) Corporation "X" is entitled to the water pollution control sales/use exemption found in Ala. Code §40-23-62-(18) for the tubing installed in Alabama, stored at the Alabama wet out center and used primarily for the control, reduction and elimination of water pollution. Corporation "X" must keep documentation in its records in support of this exemption.

(4) There is no "pass-through" sales and use tax exemption available to Corporation "X" under the Alabama Sales/Use Tax Law on property purchased and used in connection with contracts with the federal, state, county or city government. See Sales and Use Tax Reg. 810-6-1-.46(2); State of Alabama v. King and Boozer, 314 U.S. 1, 62 S.Ct. 43 (1941).

MICHAEL PATTERSON
Commissioner, Department of Revenue

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