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ALABAMA DEPARTMENT OF REVENUE REVENUE RULING 96-007

This document may not be used or cited as precedent. Ala. Code
§40-2A-5(a) (1993 Replacement Volume).

TO:

FROM: Commissioner of Revenue
Alabama Department of Revenue

DATE: November 21, 1996

RE: Applicability of Alabama sales tax to additions made to
real property leased to a party from an entity exempt
from sales tax.

ISSUES AND FACTS

The facts as represented by Requestor are as follows:

On September 1, 1991, a lease agreement was executed by and between the Airport Authority and Corporation "A", now known as Corporation "B". Section 10 of the lease agreement mandates additional capital improvements to be paid for by Corporation "A". Section 10 states, "Corporation "A" hereby agrees to expend a minimum of \$1 million for capital improvements on the Leased Premises within five (5) years from the effective date of this Agreement, including the renovation and improvements of Corporation "A's" primary public area. The plans and specifications for such improvements shall require the written approval of the Authority, . . ." In order to comply with the lease agreement, Corporation "B" intends to start this project within the next 60 days.

The project will begin by Corporation "B" hiring a contractor to perform the major renovations totalling between \$750,000.00 to \$1,000,000.00. The money will be spent strictly for leasehold improvements and does not include any additional amounts spent on personal property. Corporation "B" would pay the contractor according to the contract for work done as approved by Corporation "B" and the Airport Authority, in accordance with the lease agreement.

Corporation "B" is leasing the real estate and existing improvements from Airport Authority, which is charged with the

responsibility to operate and manage the airport according to an operating agreement between the Airport Authority and the City. It has come to Corporation "B's" attention that the lease agreement they signed with the Airport Authority, dated September 1, 1991 states:

Title to leasehold improvements is immediately vested in the city. [The lease also indicates that Corporation "A"] covenants and agrees that it will keep and maintain said Improvements in reasonable and good repair, and will surrender peaceably the possession of said Improvements in a like condition as when constructed, reasonable wear and tear excepted, at the expiration of this agreement . . .

The property, including any improvements, will be owned by the City, which will lease the real estate and related improvements to someone else at the expiration of Corporation "B's" lease. Corporation "B" will not be compensated in any manner by the Airport Authority or the City for any improvements made.

The issue is as follows: Whether the additions made to real property leased to Corporation "B", formerly known as Corporation "A", by the Airport Authority are subject to sales and use tax?

LAW AND ANALYSIS

Ala. Code §§40-23-1(a)(10) and 40-23-60(5) (1993 Replacement Volume), proclaims the following:

Sales of building materials to contractors, builders or landowners for resale or use in the form of real estate are retail sales in whatever quantity sold.

In addition, Sales and Use Tax Regulation No. 810-6-1-.27 Building Materials, provides, in pertinent part:

(2) Building materials when purchased by builders, contractors or landowners for use in adding to, repairing, or altering real property are subject to either the sales or use tax at the time of purchase by such builder, contractor, or landowner. Building material as used in the sales or use tax laws includes any material used in making repairs, alterations, or additions to real property.

Further, Sales and Use Tax Rule No.810-6-1-.46 states the following:

(2) Contractors 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 governments. Lone Star Cement Corporation v. State, Curry v. Dunn Construction et al. and State v. King & Boozer.

Therefore, the purchases of tangible personal property by the contractor(s) who perform the renovations at the Airport are clearly taxable even though the realty is owned by the Airport Authority or the City.

HOLDING

Based upon the particular facts of this case, the additions made to real property leased to Corporation "B", formerly Corporation "A", by the Airport Authority are subject to sales and use tax.


H. E. "GENE" MONROE, JR.

HEM:MJM:pj