

**ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 02-006**

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

TO:

FROM: Commissioner of Revenue
Alabama Department of Revenue

DATE: December 10, 2002

RE: The sale of signs by an out-of-state seller is subject to use tax because of the solicitation activity of sales representatives and installation services contracted for with Alabama purchasers by the out-of-state seller.

Dear:

Your client will begin selling electrical, illuminated signage to customers in Alabama from its location without the State of Alabama. The signs will be shipped into Alabama and mounted on steel support structures for ground mounting or directly onto buildings. The signs will be bolted to the buildings and the steel support structures. Although the steel support structures are typically bolted to a concrete pad, if they are not bolted, the steel structure will be set into the foundation and concrete poured around it.

In some instances your client will ship the sign into Alabama using a contract hauler based outside of Alabama. At times the signs may be transported on a trailer owned by the your client but pulled by a contract hauler. At the other times the signs will be shipped pre-paid or collect via a common carrier. Your client will not install the signs, nor will it send an employee into the State to supervise installation. The sign installation will be subcontracted to a separate sign installation company. However, your client, through the installer, may acquire installation permits when required by local code. The permits will be billed to the customer.

Your client will bill the sign, installation, permits and freight as separate line items on one invoice. The installation, permit charges and freight charges will be billed at a selling price that is higher than the cost of the services or fees.

Other than the trailers owned by your client upon which the signs may at times be transported, your client does not expect to have personnel nor real property located

within the State of Alabama. It is anticipated that your client will have no permanent employees in the State of Alabama. Occasionally your client may send a sales representative to visit customers or attend a trade show for stays of two days or less.

ISSUES

In your request for a Revenue Ruling you have asked for the Alabama Department of Revenue's position concerning whether some of your clients' activities will constitute nexus within the State of Alabama, and if your client is deemed to have nexus for sales and/or use tax purposes, your client wishes to know which of its products and services would be subject to taxation within the State of Alabama:

NEXUS

QUESTIONS:

1. Will your client have nexus for sales and use tax purposes? If yes, what triggers nexus?

ANSWER:

1. Under the facts presented, your client will have nexus with the State of Alabama for sales and use tax purposes. Nexus is established when visits are made into the State of Alabama for solicitation of sales or when installation of the sign to realty is performed or subcontracted by your client. See Scripto, Inc. v. Carson, 362 U.S. 207(1960).

QUESTION:

2. Will your client have nexus for income or franchise tax purposes?

ANSWER:

2. Yes, under the facts presented, your client will have nexus for income and business privilege license purposes in the State of Alabama because of the solicitation and installation activities conducted by or on behalf of your client.

QUESTION:

3. Will your client have nexus for local taxes?

ANSWER:

3. Yes. Most cities and counties levy their own use tax that parallels the State use tax law, including its definitions, exemptions, and rules. Solicitation of sales and/or a subcontract for installation and attachment to realty in a city

or county that levies a use tax triggers nexus for the respected local use tax in the same manner as it would for State use tax.

SUBJECT TO SALES AND USE TAX

QUESTION:

1. If the sign is shipped into Alabama without contracting for installation, should sales tax be charged on the sale of the sign?

ANSWER:

1. Under the facts described in your request for a Revenue Ruling, nexus is created when sales reps call on customers within the State of Alabama, therefore, your client is required to register to collect the State use tax on the sale of signs at retail, even though installation is contracted to be performed by a third party. However, if your client never sends sales reps into the State of Alabama to call on and solicit business from customers, there would be no nexus and your client would not be required to collect and remit the State use tax.

QUESTION:

2. If the installation of the sign is subcontracted, should sales tax be charged on the selling price of the sign and the installation charge?

ANSWER:

2. Sales and Use Tax Rule 810-6-1-.81, entitled "Installation Charges", provides in subsection (2) that:

Where the seller has a standard retail sales price for his products and the standard sales price is used both when making across-the-counter sales and when selling and installing the property, he may make a separate and additional charge for making the installation, which when shown separately in his billings and on his books, will not be subject to the sales tax.

Accordingly, as to the use tax, if the installation performed by a third party is shown and billed separately to the purchaser of the sign, the installation charge would not be subject to sales tax. The remaining portion of the selling price would be subject to use tax. See also Ala. Code, §40-23-60(10).

QUESTION:

3. Should sales tax be charged on freight charges?

ANSWER:

3. Provided nexus is established, your client would be required to collect use tax on freight charges if the sign is sold at retail without installation and delivery is in or on a conveyance owned by your client. Separately stated freight charges for delivery in or on a conveyance owned by a common carrier may be excluded from the measure of tax. See Sales and Use Tax Rule 810-6-1-.178.

QUESTION:

4. Should sales tax be charged on installation permit charges?

ANSWER:

4. No. Installation permits are related to the installation and attachment to realty rather than to the sale at retail of tangible personal property.

QUESTION:

5. If the customer furnishes a certificate of exemption from a governmental unit or a charity, are all charges exempt from sales or use tax? If not, what type of charges to such entities are subject to tax?

ANSWER:

5. Alabama governmental agencies in Alabama are exempt from tax on items they purchase in Alabama. However, governmental units generally do not have exemption certificates to furnish the seller since they are exempt by law. Sales to these governmental units should be documented by maintaining purchase orders issued by the governmental unit, sales contracts and copies of governmental agency checks used to pay the invoice for bona fide purchases made by the governmental agency.

The installation and attachment of building materials to realty by a contractor pursuant to a contract with the governmental agency (i.e. installation of signs to real property of the governmental agency) generally exempts the contractor from sales or use tax on building materials incorporated into the realty of the governmental agency, provided they have attained the appropriate exemption certificate from the State. See Rule

810-6-3-.77. If your client's contracts with a governmental agency include the installation of the sign, your client will be considered a contractor and would be required to obtain an exemption certificate from the Alabama Department of Revenue in order to be exempt from the use tax.

As a general rule, non-profit organizations, such as charities, are not exempt from sales tax. However, some charities and organizations have been specifically exempted from Alabama tax by statute. A listing of the exempt charities and organizations can be found in Sales and Use Tax Rule 810-6-3-.07.05, entitled "Charitable Organizations and Institutions." The Department's Sales and Use Tax Rules can be accessed over the Internet at www.ador.state.al.us.

QUESTION:

6. If your client's customer arranges to lease the sign through a leasing company, should your client reissue the invoice to the leasing company? Is your client allowed to accept a resale certificate from the leasing company and exempt the sale?

ANSWER:

6. Your client's invoice should accurately reflect the facts of the transaction and it should be issued to the party actually purchasing the sign from your client. See Sales and Use Tax Rule 810-6-5-.09(12) that in part states:

The sale of tangible personal property to any person engaged in the business of leasing or renting the same tangible personal property to others, in transactions subject to the rental tax, is a wholesale sale and is not subject to sales or use tax.

If a sign is sold to a leasing company, the leasing company is required to remit rental or lease tax based on the gross proceeds derived from the lease. Persons qualified to lease or rent tangible personal property in Alabama must also have a rental tax license issued by the Alabama Department of Revenue. The rental tax license number should be documented by your client and kept as part of its record of sale to the leasing company that leases signs to lessees in the State of Alabama.

CONCLUSION

Based upon the facts presented in your request for a Revenue Ruling, your client's activities in the State of Alabama involving the solicitation of business from customers in Alabama by sales representatives and contracting to install the signs will constitute nexus for purposes of the use tax, income and business privilege tax.

However, the installation charges will not be subject to the use tax if they are separately stated and separately billed to the customer.

Cynthia Underwood,
Commissioner
Department of Revenue

CU:JWH:mt