

ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 01-011

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: October 15, 2001

RE: Applicability of Alabama sales tax to sales of material handling systems manufactured by Corporation "A".

FACTS

The facts as represented by the Requestor are as follows:

Corporation "A" designs and manufactures material handling systems for distribution, manufacturing, parcel and freight, and baggage handling applications. Their systems include services that range from initial concept discussion with the customer where their consultant through design, manufacture, installation, training, commissioning and ongoing support for their material handling systems. Their customers cover various industries therefore their products must be flexible and allow for the combination of various components to create the most efficient system for each client application.

Material handling systems are normally added after a building is completed and have already existed. The supporting components are normally bolted to the floors and ceiling and can be repaired or serviced while the system remains at its original location or is removed to replace. Systems are intended to be flexible to allow for further expansions, variances and product sizes and types, and changes for modernizing and updating of equipment.

Corporation "A's" cost of machinery ranges from 55% to 70% of the total cost to design, manufacture, and install the material handling system. Of the 55% to 70% of machinery cost mentioned above, approximately 57% is directly related to material cost. The remaining cost represent labor and overhead. Though each material handling system is customized to meet the needs of each individual facility, most conveyor systems contain the same base components.

A common theme in Corporation "A's" product is that it must allow for change in the future. Therefore, these systems never become permanently affixed to real property. The systems are attached to the building using nuts and bolts and could be removed from the structure without causing damage to the system or building. Corporation "A" installs conveyor systems utilizing header and footplates and fastening components necessary to support the conveyor equipment and operations. Bolting is the main method of attachment. Although mounting/bolting appear permanent in nature, it is possible and practical to move the conveyor equipment. The system is not a structural part or main support for the building. Developing does not make complete or useable the real property nor is it attached to another device, which has become a part of the real property.

ISSUE

Whether Corporation "A's" design, engineering, manufacturing and installation of material handling systems constitute a sale of tangible personal property at retail?

LAW AND ANALYSIS

Ala. Code §40-23-2(1) levies a privilege or license tax upon every person, firm, or corporation engaged or continuing within the State of Alabama in the business of sell of retail any tangible personal property whatsoever. In other words, the Ala. Code §40-23-2(1) levies of sales tax.

In order to determine whether Corporation "A" is selling tangible personal property at retail, and is therefore a retailer, or whether Corporation "A" is instead acting as a contractor, it is important to review Sales and Use Tax Rule 810-6-.28. Sales and Use Tax Rule 810-6-1-.28 Building Materials Defined, provides, in pertinent part, the following:

- (1) The term 'building materials', as used in Alabama sales and use tax laws, means all tangible personal property, including any device or appliance used by builders, contractors, or landowners in making improvements, additions, alterations or repair to real property in such a way that such tangible personal property becomes identified with part of the realty.
- (2) A device or appliance becomes a fixture and a part of the real property to which it is connected when is built into or is attached to a structure in such a way that its removal was substantially damaged or defaces such structure.
- (3) Where the removal of the device of appliance would not substantially damage or deface the structure to which it is connected the following factors shall be considered:

(a) Actual connection where the attachment is real property. To become a part of real property, the device or appliance must have some physical connections such as by bolts, screws, nails, cement piping, or cable; by contact whereby reason of great way of bolt, no additional attachment is required; by contact, where the device or appliance necessary to make complete reusable something which is real property; by attachment to another device or appliance which has become part of real property.

(b) Appropriateness to the use or purpose of the real property to which connected. The use or purpose of the device or appliance must become an element of the use or purpose of the real property to which it is connected.

While Corporation "A's" conveyor system material handling systems are bolted and the main method of attachment, it is used to support the conveyor equipment and its operations to remain stable. In order to upgrade or change the system, it can be unbolted without causing damage to the system or building. Neither are the systems or structural part main supports for the building for which they are used. Additionally, the design of engineering services rendered by Corporation "A" are incidental to making, producing, or fabricating the new item of tangible personal property, material handling systems, and sales tax applied. See Ala Code §§40-23-1(a), and 40-23-60(10).

HOLDING

Based on the particular facts of this case, the Corporation "A's", design, engineering, manufacturing and installation of material handling systems constitutes a sale of personal property at retail.

CYNTHIA UNDERWOOD, Commissioner
Alabama Department of Revenue

CU:MJM:sb