

ALABAMA DEPARTMENT OF REVENUE  
REVENUE RULING 02-003

**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 29, 2002

RE: Applicability of Alabama sales tax to the withdrawal of small tools used on construction jobs.

**FACTS**

The facts as represented by the Requestor are as follows:

Corporation "A" is a multimember State "X" LLC engaged in the construction business in Alabama and throughout the Southeast. Corporation "A" is the sole owner and member of a State "X" single member LLC. Corporation "B" is treated as a disregarded entity for federal income tax purposes. Corporation "B" has an Alabama Department of Revenue resale certificate and buys small tools such as hand tools, nail guns, and power drills ("small tools") sales tax free. Corporation "B" exists primarily to enable owner to make retail sales and rentals to third-party customers and to serve as the primary small tool supply house for Corporation "A's" construction jobs. All of Corporation "B's" Alabama inventory is located at its warehouse in City "Y" which is located in County "Z," Alabama. Both Corporation "A" and Corporation "B" are headquartered in City "Y" Alabama.

Corporation "B's" largest customer is Corporation "A". It acts as a warehouse of small tools for Corporation "A's" construction jobs. For example, when Corporation "A" is engaged in a construction job and needs small tools for that job site, the project manager sends a requisition to Corporation "B" for those tools. Those tools are then shipped either via common carrier or by company truck from Corporation "B's" warehouse in City "Y" to

the job site. Approximately three to five percent of these small tools are ordered by Corporation "B" and drop shipped by the vendor directly to the job site.

Corporation "A" plans to enter into two construction contracts, one for a project in State "W" and one in County "U," Alabama with taxable, non-governmental entities. The County "U" job has not been abated under the tax incentive Reform Act of 1992. During the duration of these construction jobs, Corporation "B" proposes to transfer small tools to Corporation "A" for use at the job sites either from the City "Y" warehouse or by drop shipment from various out-of-state vendors.

### **ISSUES**

I. Whether the withdrawals of small tools from Corporation "B's" City "Y" warehouse will be taxable withdrawals under Ala. Code §40-23-1(a)(10), with a sales tax therefore due to the State of Alabama, and City "Y" and County "Z", on Corporation "B's" cost of those small tools?

II. Whether a consumer's use tax will be due from Corporation "A" on any small tools drop-shipped from the third-party vendor to the County "U" job site, assuming Corporation "A" has the requisite nexus with County "U" and those transfers of small tools to Corporation "A" will not constitute withdrawals within City "Y" and County "Z" ?

### **LAW AND ANALYSIS**

Ala. Code § 40-23-1(a)(10) defines taxable withdrawals as "... the withdrawal, use, or consumption of any tangible personal property by any one who purchases same at wholesale..." This "withdrawal provision" applies when a taxpayer purchases tangible personal property at wholesale and later withdraws the property from inventory for its own use or consumption, not for resale. See Sales and Use Tax Rule 810-6-1-.196(5). In order to determine whether Ala. Code § 40-23-1(a)(10) applies, the taxing status of Corporation "B" must be determined.

Single member LLCs are classified, for purposes of taxation under Title 40, in the same manner as they are classified for federal income tax purposes. See Ala. Code § 10-12-8, Alabama Department of Revenue Procedure 98-001 (March 16, 1998), and Alabama Department of Revenue Ruling 98-005 (June 18, 1998). Corporation "B" is classified as a disregarded entity for federal income tax purposes and therefore is likewise classified as such for purposes of Alabama Sales and Use Taxation. Therefore, Corporation "B" is classified as a division or branch of its owner for State income tax purposes. Thus, the sales of the materials between Corporation "B" and Corporation "A" are withdrawals and not sales for resale. The transfer of small tools from the City "Y" warehouse to Corporation "A's" State "W" and County "U" job sites for use at those job sites will be subject to the withdrawal provision and are not sales for resale. These transfers are deemed to be retail sales and should be taxed as such at

the place of withdrawal on the costs of the small tools to Corporation "B". See Sales and Use Tax Rule 810-6-1-.196 (5).

If Corporation "B" ordered small tools for drop shipment to the County "U" job site, that would warrant a consumer's use tax due to County "U" (and the related municipality, if any), assuming Corporation "A" has required nexus with that County "Z". See Yelverton's, Inc. v. Jefferson County, 742 So.2d 1216 (Ala. Civ. App. 1997), cert. denied, 742 So.2d 1224 (Ala. 1999). Drop shipments, to either County "U" or State "W", would not be classified as withdrawals under Ala. Code, §40-23-1(a)(10) since the small tools were never placed into nor withdrawn from the City "Y" warehouse.

### **HOLDING**

Based on the particular facts of this case, the withdrawals of small tools from the City "Y" warehouse for use at Corporation "A's" State "W" and County "U" job sites will constitute taxable withdrawals under Ala. Code, §40-23-1(a)(10), and a sales tax will therefore be due to the State of Alabama, City "Y", and County "Z" on the cost of those small tools. On the other hand, consumer's use tax will be due from Corporation "A" on the small tools drop-shipped by third-party vendors to the County "U" job site, assuming Corporation "A" has the requisite nexus with County "U". This is because such shipments are not classified as withdrawals under Ala. Code §40-23-1(a)(10) as the small tools were never placed into nor withdrawn from the City "Y" warehouse.

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CYNTHIA UNDERWOOD, Commissioner  
Alabama Department of Revenue

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