

ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 05-002

This document may not be used or cited as precedent. Ala. Code § 40-2A-5(a) (2003 Replacement Volume).

TO:

FROM: G. Thomas Surtees
Commissioner of Revenue
Alabama Department of Revenue

DATE: November 7, 2005

RE: Determination of local use tax liability through the apportionment of tangible personal property based on its usage in localities within the service area of Taxpayer.

FACTS

The facts as presented by Corporation, (hereinafter the "Taxpayer") are as follows:

The Taxpayer operates a rail transportation network in the United States and Canada, including the State of Alabama. The Taxpayer files sales/ use tax returns in Alabama for eighty-five different taxing jurisdictions. The Taxpayer was granted a direct pay permit by the Alabama Department of Revenue effective January 1, 2004.

As specifically stated in the Taxpayer's request:

The Taxpayer's purchases of tangible personal property that it utilizes throughout its system in Alabama can be divided into three categories. The first category consists of inventory items, such as large sections of railroad track or cross ties. The Taxpayer is able to readily determine the specific destination that such item will be consumed, and therefore, the specific location in which a use tax liability arises. Secondly, approximately 70% of the Taxpayer's liability is represented by purchases of diesel fuel for which the Taxpayer can easily determine the appropriate jurisdiction for taxation. However, the third category, non-inventory, lower value items used in repair and maintenance activities, are routinely utilized by the Taxpayer's employees for repairs and maintenance across the Taxpayer's track system in Alabama and quite possibly in different and multiple taxing jurisdictions. Such usage represents approximately 10-20% of the Taxpayer's aggregate

liability for sales/use taxes in Alabama. Often these activities are required to restore rail service following a storm or accident. The Taxpayer's employees often perform work over long sections of track that will span several miles. The Taxpayer's employees are not able to accurately assess the exact location in which certain tangible personal property is used for repairs and maintenance.

Under Regulation §810-6-4-.13, the Taxpayer is required to report and remit local taxes based upon the actual use of its tangible personal property. While the Taxpayer has complied with its reporting obligation and does not seek guidance pertaining to previous taxable purchases, it is the Taxpayer's position that requiring the Taxpayer to specifically identify each item used within an exact jurisdiction imposes an undue administrative burden on the Taxpayer. Such an exact determination requires the development of information not captured within normal business processes by the Taxpayer. In order to comply with this requirement, monthly allocation of a significant amount of resources to review in excess of 500 monthly invoices and the relevant supporting documentation would be necessary. Furthermore, the requirement that the Taxpayer make such identifications threatens to delay such repair projects in order to attempt to capture the information in a timely manner.

ISSUE

For local use tax purposes, the Taxpayer requests a ruling on the validity of its proposed methodology to apportion taxable purchases of tangible personal property among the various localities within its service area based on a fraction (the numerator of which is the number of track miles in such locality and the denominator is the total number of track miles in Alabama).

LAW AND ANALYSIS

The Taxpayer is required pursuant to Regulation 810-6-4-.13 to report and remit local taxes based upon the actual use of its tangible personal property in Alabama. It is practically impossible, however, for the Taxpayer to specifically determine in many situations where each item of tangible property is used or consumed for local use tax purposes.

Quite often, the Taxpayer's repair activities involving the use of tangible personal property are required to restore rail service following a storm or accident. In those instances, the Taxpayer's employees perform work over long sections of track spanning many miles. The work could take employees through several taxing jurisdictions. As a result, the employees are unable to accurately determine the exact location of each item of tangible personal property used to perform the necessary repairs and/or maintenance.

A requirement that the Taxpayer specifically identify the location of each item of property used within each local jurisdiction would impose undue administrative burdens on the Taxpayer. An exact determination of the location of each and every item consumed by the Taxpayer in the course of its trade or business would require an allocation of enormous resources given the myriad of local jurisdictions in which the Taxpayer operates.

Based on these facts, the Taxpayer is permitted to utilize a method which reasonably approximates the amount of items of property used or consumed within each locality within its service area. The Taxpayer's method of apportioning property usage among the various localities within its service area based upon the number of track miles in a locality is a method which fairly and reasonably achieves this result. Accordingly, this method is a permissible, reasonable method of determining the amount of tangible personal property used within each locality for which the Alabama Department of Revenue administers taxes.

RULING

Based on the fact that the Taxpayer is a company whose operations throughout Alabama prohibit the Taxpayer from specifically determining the localities in which each item of property is consumed, the Taxpayer's method of apportioning property usage among the various localities in its service area based upon the number of track miles in the localities is a permissible, and reasonable method of determining the amount of tangible personal property used within each locality for which the Department of Revenue administers taxes in satisfaction of the requirements of Regulation 810-6-4-.13.

G. THOMAS SURTEES, Commissioner
Alabama Department of Revenue

GS:MG:sb