

ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 97-002

This document may not be used or cited as precedent. Code of Ala. 1975, §40-2A-5(a) (1993 Replacement Volume).

TO:

FROM: Commissioner of Revenue
Alabama Department of Revenue

DATE: August 29, 1997

RE: Revenue Ruling 97-002

ISSUES AND FACTS

The Taxpayer is a resident of the State of Alabama and an individual owner of a fleet of automotive vehicles. The Taxpayer does business as Company A Leasing and is engaged in the business of leasing automotive vehicles primarily to Corporation X, which is an Alabama corporation engaged in the business of providing long-haul trucking services. The Taxpayer has the appropriate rental tax license and remits rental tax on the automotive vehicles that it leases. The Taxpayer also has a sales tax license and collects and remits sales tax when any of the leased automotive vehicles are sold at retail by the Taxpayer. The Taxpayer has purchased the dealer's license required by §40-12-51, but has not taken out the regulatory license required under §§40-12-390, et seq. See §40-12-391.

In order to take advantage of the benefits of limited liability, Taxpayer wishes to transfer the leased vehicles to Company A, L.L.C., a newly formed limited liability company (LLC), in consideration for a membership in LLC. LLC is owned 99 percent by Taxpayer and 1 percent by Corporation Y, an Alabama corporation which is also wholly owned by Taxpayer. The primary purpose of LLC is to engage in the business of leasing automotive vehicles and other tangible personal property to others. The vehicles transferred to LLC by Taxpayer will be leased to others. Before receiving the automotive vehicles from Taxpayer, LLC will have obtained lease tax and sales tax licenses and will begin remitting lease tax on vehicles leased to others, as well as sales tax on any vehicles sold at retail by LLC.

Taxpayer seeks to confirm that no sales tax liability will be incurred upon the transfer of the vehicles from Taxpayer to LLC.

LAW AND ANALYSIS

A person engaged in the business of selling automotive vehicles is subject to sales tax and is required to collect and remit sales tax upon the automotive vehicles. Section 40-23-2(4). However, wholesale sales are not subject to sales tax. Sections 40-23-1(a)(9) and 40-23-1(a)(10). Since the Taxpayer is engaged in the business of leasing automotive vehicles to others, the Taxpayer's purchase

of the automotive vehicles is deemed to be at wholesale. Section 40-23-1(a)(9)j. Likewise, the sale, or transfer, by the Taxpayer to LLC would also qualify as a wholesale sale and would be exempt from sales tax, since LLC is also engaged in the business of leasing the automotive vehicles to others.

Since the Taxpayer has failed to purchase the required license pursuant to §40-12-391, the Taxpayer does not fully qualify as a licensed authorized dealer. However, even if the transfer by the Taxpayer to LLC is determined to be subject to the provisions of §40-23-100, et seq., commonly referred to as the casual sales tax provisions, the transactions would still qualify as exempt wholesale sales, because the provisions of the sales tax statutes are incorporated into the casual sales tax provisions by §40-23-105. Accordingly, the transfer of the automotive vehicles would still qualify as a wholesale sale and exempt from sales tax, regardless of whether the transactions are subject to the general sales tax statutes found at §§40-23-1 through 40-23-36 or the casual sales tax found at §§40-23-100 through 40-23-111.

RULING

When a person, who is engaged in the business of leasing automotive vehicles, sells the automotive vehicles to another person, who is also engaged in the business of leasing automotive vehicles to others, the sale qualifies as a wholesale sale under §40-23-1(a)(9)j and is exempt from the levy of sales tax under §40-23-2(4) and the provisions of the casual sales tax found at §40-23-100, et seq.

H. E. MONROE, JR.
Commissioner of Revenue

HEM:JWH:pj