

ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 97-005

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: September 29, 1997

RE: Revenue Ruling 97-005

ISSUES AND FACTS

The Taxpayer is an out-of-state corporation engaged in the business of selling tangible personal property at retail. The Taxpayer has operated within the State of Alabama through direct salespersons who have solicited orders from corporate, government and educational organizations. The Taxpayer has also sold its products to customers in Alabama through mail order sales, using primarily catalogs and other promotional materials sent directly to Alabama consumers. The Taxpayer also accepts orders through its web page and through telephone solicitations. The Taxpayer is currently registered with the Alabama Department of Revenue for Corporate Income, Franchise, and Sales/Use Taxes purposes and has been remitting those taxes to the Alabama Department of Revenue..

The Taxpayer recently sold its retail sales operation and now only operates a retail sales office at its corporate headquarters, which is located in another state. As a result of the change in the Taxpayer's marketing strategy, the Taxpayer no longer has a physical presence within the State of Alabama. Accordingly, the Taxpayer plans to terminate its sales and use tax registration with Alabama and cease collecting the sales and use taxes. In addition, the Taxpayer plans to file a final income tax and franchise tax return with the State of Alabama, since it is no longer conducting business through agents within the State of Alabama. The Taxpayer will continue to operate its mail order business through catalogs, promotional mailings, its web page and by telephone. The Taxpayer does not plan to engage in any other type of activities within the State of Alabama.

The Taxpayer requests a ruling concerning whether the State of Alabama will continue to require the Taxpayer to collect sales or use taxes and pay corporate income and franchise taxes even though it no longer is engaged in activities that provide a substantial "nexus" with Alabama.

LAW AND ANALYSIS

The Due Process Clause and Commerce Clause of the United States Constitution impose limitations on the ability of the State of Alabama to levy income and franchise taxes and a sales or use tax collection obligation on out-of-state taxpayers. In order for the State of Alabama to constitutionally impose its taxes on an out-of-state taxpayer, there must be a "nexus" or some minimum contacts between the out-of-state taxpayer and the State of Alabama.

The substantial nexus requirement is one of the four tests which must be satisfied in order for state taxes to avoid unconstitutionally burdening interstate commerce. See Complete Auto Transient, Inc. v. Brady, 430 U.S. 274 (1977). In Quill Corp. v. North Dakota, 112 S. Ct. 1904 (1992), the court reaffirmed that under the Commerce Clause, a physical presence by a Taxpayer within the state must be established before a state may impose upon it a duty to collect and remit a state use tax. The Court reaffirmed its holding in National Bellas Hess, Inc. v. Illinois Department of Revenue, 386 U.S. 753 (1957), which had held that a sufficient nexus with the State of Illinois did not exist when the Taxpayer's only contact was through mail order sales. Although the Quill case states that the Due Process Clause can be satisfied without a physical presence in a state, mail order sales activities continue to be exempt from state sales/use tax obligations. Accordingly, since the Taxpayer no longer has a physical presence within the State of Alabama and only does business with the State of Alabama as a mail order seller, the Taxpayer will not be required to collect and remit the Alabama Use Tax on its mail order sales after it officially cancels its sales/use tax license with the Alabama Department of Revenue.

In Wisconsin Department of Revenue v. William Wrigley, Jr. Co., 112 S. Ct. 2447 (1992), the U.S. Supreme Court discussed Public Law 86-272, which prohibits a state from imposing an income tax on an out-of-state business engaged in interstate commerce, when the only business activity within the state consist of soliciting orders for the sales of tangible personal property by its employers or representative. Since the Taxpayer no longer has sales persons within the State of Alabama, the Taxpayer will no longer have an income tax return obligation after filing its final return. Since the franchise tax is imposed upon the privilege of doing business within the State of Alabama, the Taxpayer also will no longer have a franchise tax filing obligation in Alabama after it files a final return.

RULING

An out-of-state corporation that has qualified to do business within the State of Alabama and registered to collect the State Use Tax and pay the State income and franchise taxes may terminate its filing of tax returns with the State of Alabama when it no longer has sufficient contacts with the State of Alabama to satisfy the nexus requirement for the imposition of the State taxes. The continuation of the Taxpayer's mail order business will not prohibit an out-of-state business from terminating its tax reporting obligations with the State of Alabama.

H. E. MONROE, JR.
Commissioner of Revenue

HEM:JWH:em