

ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 97-014

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

TO:

FROM: Commissioner of Revenue
Alabama Department of Revenue

DATE: November 12, 1997

RE: Applicability of Alabama sales and use tax to the equipment used
in a security system and the attendant monitoring services.

ISSUES AND FACTS

The facts as represented by Requestor are as follows:

Corporation "A" is headquartered in State "X" with offices in several other states. Corporation "A" is currently not engaged in business in Alabama. In the near future, Corporation "A" is planning to provide security systems and monitoring services to commercial customers located in Alabama. The security systems generally consist of a micro-processor based video transmitter, closed circuit television cameras, sensors, motion detectors, an alarm, control panel, keypad and electrical wiring. The security system will be connected to a remote visual command center located in State "X" where the monitoring services are provided. Integrated voice communication will allow the command center and the remote site to communicate interactively. Corporation "A" employees in the visual command center will be able to adjust certain camera features, motorized gates, electric door locks, lights, and environmental controls.

Corporation "A" will provide commercial customers with both security systems and monitoring services for a stated fee. The systems will be either sold to customers or provided for a specified period of time (service contract). Under the terms of the service contract, title to the security system remains with Corporation "A". Service contracts are anticipated to be from three to five years, and the customer will have the option of renewing indefinitely. At the end of the service contract, the system will be returned to Corporation "A". Monitoring services will be

for an expected contract term of three to five years. Service contract customers will only obtain the right to use this system for the

period during which the monitoring services are being provided.

Service contract customers will be billed on a monthly, quarterly, or semi-annual basis. Each billing will include separately stated charges for the use of the system and a monitoring service fee. Customers who purchase the security system will remit periodic payments for the monitoring service.

Corporation "A" will purchase the system in a completed condition. Corporation "A" estimates the material cost of the system to be less than 20% of the total service contract fee. Corporation "A" will be supplying complete, turn-key installed systems with no manufacturing or assembly performed by Corporation "A".

Corporation "A" will subcontract the majority of the installation. However, there will be cases when Corporation "A" employees will install the equipment and perform repair service and training.

The issues are as follows:

1. Whether Alabama sales or use tax would apply when Corporation "A" sells the security system to a customer and provides the installation?
2. Whether Alabama sales or use tax would apply when the security system and monitoring service are provided by Corporation "A" pursuant to a service contract with Corporation "A"?

LAW AND ANALYSIS

ISSUE NO. 1:

With respect to security system components which become a part of realty, Sales and Use Tax Reg. 810-6-1-.27(2) provides the following:

Building materials when purchased by builders, contractors, or landowners for use in adding to, repairing, or altering real property are subject to the sales or use tax at the time of purchase by such builder, contractor, or landowner. Building materials as used in the sales or use tax laws includes any material used in making repairs, alterations, or additions to real property. "Builders", "contractors" and "landowners", mean and include any person, firm, association, or corporation making repairs, alterations or additions to real property.

Therefore, Corporation "A" is a contractor making additions to real property, and

Corporation "A" must pay sales or use tax to the vendor at the time they purchase the system components which they install or, if the vendor is not registered to collect Alabama use tax, must report and pay consumers use tax directly to Alabama measured by the purchase price of the components. Amounts billed to customers by Corporation "A" for furnishing and installing system components which become a part of realty, or maintaining or repairing components that are a part of realty, are not taxable. See Ala. Code §40-23-1(10) (1993 Replacement Volume).

With respect to system components which remain personalty, Corporation "A" is a retailer making taxable sales to customers and should collect sales or use tax based on the selling price and remit the tax to Alabama. Parts sold to customers by Corporation "A" in conjunction with repairs or maintenance system components not affixed to realty are sold at retail; and, if the charges for the parts are stated separately from labor, Corporation "A" must collect and remit sales tax on the amounts billed for parts. If parts and labor are not separately stated, the total amount billed for the repairs is taxable and Corporation "A" must collect and remit the tax thereon. See Ala. Code §40-23-1(10). (1993 Replacement Volume).

ISSUE NO. 2:

Ala. Code §40-12-220(5) (1993 Replacement Volume) defines a leasing or rental as a "transaction whereunder the person who owns or controls the possession of tangible personal property permits another person to have the possession or use thereof for a consideration and for the duration of a definite or indefinite period of time without transfer of the title to such property." In addition, The Alabama Court of Civil Appeals held in State v. Steel City Crane Rental, Inc., 345 So.2d 1371 (Ala. Civ. App. 1977), that "the principal characteristic of a rental or lease is the giving up of possession to the lessee so that he, as opposed to the lessor/owner, exercises control over and uses the leased or rented property."

Based on the information provided in the revenue ruling request and in the attached master agreement, Corporation "A" is not leasing tangible personal property; but, instead is providing a nontaxable service. Under the terms of the contract, title to the security system remains with Corporation "A". Service contract customers will only obtain the right to use the system during the period which the monitoring services are being provided. At the end of the service contract term, the system will be returned to Corporation "A". Corporation "A" installs the system or subcontracts the installation. Corporation "A" employees monitor the system from the remote visual command center, communicate with the system interactively, and control the cameras, gates, locks, lights, etc., on the premises. Upon receiving an alarm, Corporation "A" employees decide whether the situation is an emergency or a non-emergency and notify the appropriate authorities or personnel. Corporation "A" provides reports to the customer showing the time and resolution of each monitored situation. In short, Corporation "A" exercises control over and uses the

security system pursuant to the service contract. Corporation "A", therefore, must pay sales or use tax to the vendor at the time it purchases the system components which it uses or consumes or, if the vendor is not registered to collect Alabama sales or use tax, must report and pay consumers use tax directly to Alabama measured by the purchase price of the components.

HOLDING

Based on the particular facts of this case, with respect to system components which become a part of realty, Corporation "A", as a contractor making additions to realty, must pay sales or use tax to the vendor at the time it purchases the system components which it installs or, if the vendor is not registered to collect Alabama use tax, must report and pay consumers use tax directly to Alabama measured by the purchase price of the component. Amounts billed to customers by Corporation "A" for furnishing and installing system components which become a part of realty, or maintaining or repairing components that are a part of realty, are not taxable.

With respect to system components which remain personalty, Corporation "A" is a retailer making taxable sales to its customers and must collect sales and use tax based on the selling price and remit the tax to Alabama. Parts sold to customers by Corporation "A" in conjunction with repairs or maintenance system components not affixed to realty are retail sales, and if the charges for parts are stated separately from labor, Corporation "A" must collect and remit sales tax in the amount billed for parts. If parts and labor are not separately stated, the total amount billed for repairs is taxable and Corporation "A" must collect and remit thereon.

When the security system and monitoring service are provided by Corporation "A" pursuant to a service contract with Corporation "A", Corporation "A" is not leasing tangible personal property; but, instead is providing a non-taxable service. Therefore, lease tax would not be due. However, Corporation "A" must pay sales or use tax to the vendor at the time it purchases system components they use or consume in the performance of the service contract with their customers.

H. E. "GENE" MONROE, JR.

HEM:MJM:pj