

ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 97-016

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: November 20, 1997

RE: Revenue Ruling 97-016

ISSUES AND FACTS

The Taxpayer, manufactures printing, publishing, and specialty paper and integrates pulp and timberland operations with some of its manufacturing facilities. The Taxpayer operates a manufacturing facility which manufactures uncoated and specialty paper in Alabama. The Taxpayer proposes to form an Alabama LLC and conduct its Alabama operations through the LLC. If a two-member LLC is formed, the Taxpayer will form a subsidiary to hold a 1% interest in the LLC and the Taxpayer will hold the remaining 99%. If a single member LLC is chosen, the Taxpayer will hold the entire 100% interest. In either case, the Taxpayer proposes to transfer all of its Alabama, assets and liabilities to the LLC in exchange for a membership interest in the LLC. The newly formed LLC will register to do business in Alabama and the Taxpayer will no longer conduct business in Alabama. The primary purpose of the transaction is to separate the Alabama business operations from other divisions within the Taxpayer's corporate structure for legal purposes. In

addition, the Taxpayer expects the separation to ease the management responsibilities, the administrative processes and the financial reporting requirements associated with its Alabama operations.

The Taxpayer requests a ruling from the Alabama Department of Revenue concerning whether the transfer of assets and liabilities from the Taxpayer to the LLC will qualify for an exemption from Alabama sales tax as a wholesale sale or a casual or isolated sale in accordance with the principles set forth in Alabama Ruling 97-002.

LAW AND ANALYSIS

All retail purchases of tangible personal property within the State of Alabama are subject to sales tax at §40-23-2. However, sales for resale, or wholesale sales, are not subject to sales tax . Section 40-23-1-(a)(9). In addition, casual or isolated sales of tangible personal property by any person or company that is not engaged or continuing within this State in the business of selling such tangible personal property at retail, is not subject to sales tax. Section 40-23-2(1). Accordingly, since the Taxpayer is not regularly engaged in the business of selling at retail the assets and liabilities of its manufacturing facilities, the transfer of such assets and liabilities of its Alabama, facility to the newly formed LLC is exempt from sales tax as a casual or isolated sale. The transfer of the inventory of uncoated and specialty paper products manufactured at the facility is exempt from sales tax as a wholesale sale, since the newly formed LLC will be engaged in reselling the inventory.

However, automotive vehicles, if any, which are transferred from the Taxpayer to the newly formed LLC are subject to the casual sales tax imposed by the provisions of §40-23-100, et seq. All casual or isolated sales of automotive vehicles, which are not made through a licensed dealer, are subject to the casual sales tax when the new owner registers the vehicles with the Probate Judge. The taxable measure is the consideration paid by the LLC to the Taxpayer for the automotive vehicles. Where the amount of the consideration is unknown, the taxable measure is the value of the automotive vehicles according to the tables used for ad valorem tax purposes.

The transfer of any automotive vehicles by the Taxpayer to the LLC is distinguishable from the treatment given automotive vehicles in Revenue Ruling 97-002. The transfer of automotive vehicles in Revenue Ruling 97-002 was made by a taxpayer engaged in the business of leasing automotive vehicles to a newly formed LLC which was also going to be engaged in the business of leasing automotive vehicles. Such a transfer qualified as an exempt wholesale sale. In the current request for a revenue ruling, automotive vehicles transferred to the LLC would not be exempt from the casual sales tax as wholesale sales.

RULING

The transfer by a Taxpayer of the assets and liabilities of its manufacturing facility to a newly formed LLC is exempt from sales tax as a casual sale. Any inventory transferred to the LLC would be exempt from sales tax as a wholesale sale. Automotive vehicles which may be transferred to the new LLC would be subject to the casual sales tax provisions found at §40-23-100 et seq.

H. E. MONROE, JR.
Commissioner of Revenue

HEM:JWH:em