

ALABAMA DEPARTMENT OF REVENUE  
REVENUE RULING 98-005

**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: June 18, 1998

RE: Applicability of Alabama sales and use tax to a transaction involving a single member LLC classified as a "disregarded entity" for federal income tax purposes.

**ISSUES AND FACTS**

The facts as represented by Requestor are as follows:

Corporation "A" is a manufacturer of metal buildings. Sometimes the customer wants Corporation "A" to erect a building being sold and sometimes the customer will contract with a local contractor to erect the building purchased from Corporation "A". Corporation "A" sells its buildings from both inside and outside the State of Alabama. Corporation "A" bids a number of projects against metal building manufacturers that are domiciled in State "X". Since the metal building industry is highly competitive, any additional cost which Corporation "A" incurs makes it less competitive and therefore less likely to be awarded a job which is bid. The metal building industry is a mature industry and Corporation "A" is working on small margins.

On any "furnish and install" job that is bid outside the State of Alabama, Corporation "A" must incorporate into the cost of the job the sales tax it must pay under the withdrawal provisions contained in Ala. Code §40-23-1(a)(10). If a metal building manufacturer not located in Alabama is bidding against Corporation "A", it will usually be awarded the contract because it does not have to contend with the

additional sales tax

costs or the additional compliance costs.

Corporation "A" is therefore proposing the following:

1. Corporation "A" will form a single member LLC owned entirely by it;
2. The LLC will contract with the customer for the sale of the structural components of the building which the LLC will purchase from Corporation "A". The LLC will be legally obligated to deliver the structural components of the building to the customer;
3. Corporation "A" will contract separately with the customer for the erection of the building components as Corporation "A" has a general contractors license and is licensed to do business as a general contractor in multiple states;
4. The LLC will separately contract with Corporation "A" to deliver the structural components to the customer as the LLC's agent. The LLC does not own any rolling stock and does not want to use a common carrier because of the unique nature of the structural components. These components must be packaged properly on the trailer and unloaded properly to avoid damage. This is impossible to do with a common carrier.

The issue is as follows:

Whether Corporation "A" will be liable for Alabama sales or use tax under the "withdrawal" provisions of Ala. Code §40-23-1(a)(10) when Corporation "A" forms a single member LLC to contract with Corporation "A's" customers and purchase building structural components from Corporation "A"?

### **LAW AND ANALYSIS**

Ala. Code §40-23-1(a)(10) provides that the withdrawal, use, or consumption of any tangible personal property by one who purchases the same at wholesale is a sale at retail, or retail sale, and such wholesale purchaser shall report and pay the taxes thereon upon the withdrawal from inventory. To determine whether Ala. Code §40-23-1(a)(10) applies, the taxing status of a single member LLC, owned by Corporation "A", must be determined. Ala. Code §40-18-28 was amended by Act 97-920, which repealed the prior classification of single member LLCs as partnerships and now requires "disregarded entity" status in conformity with the federal income tax treatment of those entities. Accordingly, on March 16, 1998, the Department issued Revenue Procedure 98-001 which provides, in pertinent part:

- (3) Applicability of Taxing Statutes.

(a) For purposes of the taxing statutes in Title 40, Code of Alabama 1975, all LLCs which, pursuant to Act 97-920, includes both single member and multiple member LLCs organized on or after January 1, 1997, will be classified as they are classified for federal income tax purposes under the Internal Revenue Service's 'check-the-box' regulations.

For federal income tax purposes, a domestic organization with only one member is disregarded as a separate organization for tax purposes. It is treated as a proprietorship if it is owned by an individual. If owned by a corporation or other business entity, it is treated as a branch or division. Treas. Reg. §301.7701-3(b).

Therefore, a single member LLC owned entirely by Corporation "A" is a "disregarded entity" and must be treated as a branch or division of Corporation "A", and not a separate entity. Thus, Corporation "A's" proposed LLC structure would not create a sale for resale, but instead would be subject to the withdrawal provision of Ala. Code §40-23-1(a)(10).

#### **HOLDING**

Based on the particular facts of this case, the single member LLC owned by Corporation "A" is a "disregarded entity" and thus, a branch or division of its parent. Therefore, the transaction does not create a sale for resale and the "withdrawal" provisions of Ala. Code §40-23-1(a)(10) are applicable to the transaction.

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H. E. "GENE" MONROE, JR.

HEM:MJM:pj