

ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 98-014

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TO:

FROM: Commissioner of Revenue
Alabama Department of Revenue

DATE: December 14, 1998

RE: Applicability of Alabama sales tax to the transfer of assets of corporate subsidiaries into a singular intermediate holding company.

FACTS

The facts as represented by Requestor are as follows:

Corporation "A", is engaged in the equipment rental business. Corporation "A" currently conducts its equipment operations through several operating subsidiaries with locations in approximately 25 states. Currently, the corporate structure of Corporation "A" consists of three tiers: (1st Tier) Corporation "A", the parent holding company; (2nd Tier) Corporation "A" Holdings, Inc. and (3rd Tier) the operating subsidiaries. Although Corporation "A" headquarters is located in State "X", one operating subsidiary of Corporation "A" engages in rental operations in Alabama.

In order to form a more optimal and efficient corporate structure, Corporation "A" wishes to collapse its operating subsidiaries and intermediate holding companies into a singular intermediate holding company by a concurrent IRC § 332 liquidation and merger of the subsidiaries and the holding companies. The actual ownership interest by Corporation "A" in the assets of the intermediate holding company will be the same prior to and subsequent to liquidation and merger.

ISSUES

(1) Whether the transfer of the business assets such as furniture, fixtures, equipment and supplies used in Corporation "A's" equipment rental business

operations are exempt from Alabama sales and use taxation?

(II) Whether the transfer of inventory and rental equipment used in Corporation "A's" equipment rental business operations is exempt from Alabama sales and use taxation?

(III) Whether the transfer of motor vehicles (non-rental property) used in Corporation "A's" equipment rental business operations are exempt from Alabama sales and use taxation?

LAW AND ANALYSIS

All retail sales of tangible personal property within the State of Alabama are subject to the sales tax levied at Ala. Code § 40-23-2. However, sales for resale, or wholesale sales, are not subject to the sales tax. Ala. Code § 40-23-1(a)(9). In addition, casual or isolated sales of tangible personal property, with the exception of automobiles, by any person or company not engaged or continuing within this State in the business of selling such tangible personal property at retail, is not subject to sales tax. Sales and Use Tax Reg. 810-6-1-.33. See also Ala. Code § 40-23-100, et. seq.

Accordingly, as Corporation "A's" operating subsidiaries are not engaged in the business of selling at retail business assets, under Alabama Law the transfer of furniture, fixtures, equipment and supplies from the operating subsidiaries to Corporation "A" is not a sale at retail, but rather is a casual or isolated sale and is therefore exempt from Alabama sales tax. The transfer of inventory and rental equipment is exempt from sales tax as a wholesale sale, as the inventory that will be transferred from the Corporation "A" operating subsidiaries to Corporation "A" will be resold by Corporation "A" to its customers. Additionally, the rental equipment transferred to Corporation "A" from the Corporation "A" operating subsidiaries will be held for leasing to Corporation "A's" customers.

However, automotive vehicles which are transferred from the Corporation "A" operating subsidiaries to Corporation "A" are subject to the casual sales tax imposed by provisions of Ala. Code §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. A sale includes "installment and credit sales and the exchange of property as well as the sale thereof for money, every closed transaction constituting a sale." Further, "[e]ach transaction whereby property is transferred from one owner to another constitutes a sale under the sales tax law. . . ." See Sales and Use Tax Reg. 810-6-1-.150. The transfer of automotive vehicles constitutes an exchange of property whereby the automotive vehicles are transferred from Corporation "A's" operating subsidiaries to Corporation "A".

Therefore, under Alabama Sales Tax Law, the transfer of these motor vehicles constitutes a sale. The taxable measure is the consideration paid by Corporation "A" to the Corporation "A" operating subsidiaries 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 automotive vehicles by the operating subsidiaries to Corporation "A" 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 revenue ruling, automotive vehicles transferred to Corporation "A" would not be exempt from the casual sales tax as wholesale sales.

HOLDING

Based upon the particular facts of this case, the transfer of the business assets from the Corporation "A" operating subsidiaries to Corporation "A" is exempt from Alabama sales tax as a casual sale. Any inventory transferred to Corporation "A" would be exempt from sales tax as a wholesale sale. Automotive vehicles transferred to Corporation "A" are subject to the casual sales tax provisions found at Ala. Code § 40-23-100 et seq.

H. E. "GENE" MONROE, JR.

HEMJR:MJM:pj