

ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 99-003

This document may not be used or cited as precedent. Ala. Code § 40-2A-5(a) (1998 Replacement Volume).

TO:

FROM: Commissioner of Revenue
Alabama Department of Revenue

DATE: March 31, 1999

RE: Applicability of Alabama sales and use tax to motor vehicles purchased in Alabama and subsequently titled in another state.

ISSUES AND FACTS

The facts as represented by Requestor are as follows:

Corporation "A" is a corporation organized and existing under the laws of the State of Alabama with its principal office in City "X", Alabama. It holds authority from the U.S. Surface Transportation Board (formerly Interstate Commerce Commission) to operate in interstate commerce as an irregular route common and contract carrier of freight.

Corporation "A's" business is an "on demand" truckload business. It does not operate between specific terminals. It does not operate over specific or regular routes. It does not operate on schedule. Its vehicles are dispatched to pick-ups, and to make deliveries, on the basis of shipper demand, at whatever point and at whatever time that may be; although Corporation "A" does "spot" semitrailers for loading, on request, at the facilities of those Corporation "A" shippers which provide a substantial volume of freight.

As of December 31, 1998, Corporation "A" operated 464 tractors and 850 semitrailers in 48 states. It employs 525 drivers on a full-time basis of whom 22% are residents of Alabama, and 78% are residents of 25 other states.

Each Corporation "A" driver is assigned to a specific tractor. Under the terms of each driver's employment agreement with Corporation "A", the driver is permitted 4 days at home each month; and each driver is permitted to, and normally does, drive his/her tractor

home with him or her for at least that time period each month. Tractors do not, otherwise, have any fixed place of abode.

Trailers flow even more freely through the system than do tractors, as they are not assigned to particular tractors or drivers.

Whether or not a particular tractor or semitrailer appears at Corporation "A's" facilities in City "X", or in the State of Alabama at all, or, if so, how frequently, is entirely dependent upon the flow of freight. That is, drivers and tractors operate over the highways of Alabama only to the extent that the availability of business and the proximity of those drivers and tractors to the State of Alabama, at any given time, warrants their appearance in the State for the pick-up or delivery of freight.

Corporation "A" has maintenance facilities in Alabama only at City "X" and, if any particular vehicle happens to be in the vicinity of City "X" at a time when either scheduled, or emergency, maintenance is required on it, such maintenance can be carried out at Corporation "A's" City "X" facilities. However the majority of vehicle maintenance is carried on wherever, without or within the State of Alabama, a vehicle is located when maintenance is required or scheduled.

In the calendar year of 1998, 10% of the mileage operated by Corporation "A's" tractors was in the State of Alabama.

All vehicles are dispatched by Corporation "A's" City "X" terminal. The term "dispatched", however, does not mean that these vehicle are physically sent out from City "X". Rather the term "dispatched" as used here, means that, by telephone communication from City "X" to a satellite communication company in State "B", messages are relayed to drivers/tractors throughout the United States instructing them where to go for pick-up/delivery of their next load. In fact, the vast majority of movements of Corporation "A's" vehicles neither begin or end in City "X" or in the State of Alabama.

All of Corporation "A's" vehicles, both tractors and semitrailers, are registered in State "Y" as quickly as possible after the purchase and before use pursuant to the International Registration Plan ("IRP") and Ala. Code 32-6-56. Corporation "A" maintains an "established place of business," within the meaning of the IRP, in State "Y". Vehicles are not, however, delivered to Corporation "A" in State "Y".

Corporation "A" purchases all tractors from an Alabama seller for delivery in Alabama; but whatever the location of sellers of tractors and trailers, the vehicles are purchased by Corporation "A" for delivery to Corporation "A"; the sale is effected, and title passes to Corporation "A" in the State of Alabama. Corporation "A" normally purchases multiple tractors (and multiple trailers) in a single order. Under the current practice, in order to comply with State "Y" registration requirements, the seller will forward to Corporation "A's"

State "Y" office an invoice listing several tractors that Corporation "A" has contracted to purchase for delivery in the near future so that Corporation "A" can display the invoice and other title documents to the State "Y" Division of Motor Vehicles in order to register those vehicles in compliance with State "Y" requirements.

Those vehicles are not delivered to Corporation "A" in State "Y". Rather the vehicles themselves are delivered by the seller to Corporation "A" in Alabama at its City "X" facility.

Corporation "A" intends that every vehicle purchased by Corporation "A" in the future is handled and documented as set out in the following paragraphs:

1. The vehicle will be registered in State "Y", or in any event in an IRP state other than Alabama in accordance with IRP requirements; and
2. The invoice received from the seller, whether or not initially forwarded to State "Y", will reflect Corporation "A's" City "X" address as well as its State "Y" office address on the invoice; and the invoice will also expressly state that the date of delivery of the vehicle may, and the place of delivery will, differ from those shown on the invoice, but that the date and place of delivery will be reflected on a delivery receipt executed contemporaneously with delivery of the vehicles to Corporation "A"; and
3. The vehicle will be delivered by the seller to Corporation "A" in the State of Alabama; and the date, place and time of delivery in Alabama will be reflected in a delivery receipt signed, contemporaneously with physical delivery, by an agent of the seller and Corporation "A"; and
4. Either as a part of, or simultaneously with the execution of, the delivery receipt, a "drive-out" certificate will be executed by agents of the seller and of Corporation "A" certifying the intended removal of the vehicle from Alabama within 72 hours from the time and date of delivery; and
5. Within 72 hours after delivery the vehicle will be removed from the State of Alabama to a point in State "Z" (or another state), and at no time, either prior to or during, removal from the state will it pull or carry a load of any type whether revenue or otherwise; and
6. Following removal from the State of Alabama, and application to the vehicle, of the necessary registration, federal identification numbering, etc., the vehicle will first be used in commerce in State "Z" or in a state other than the State of Alabama. The records of the company will reflect the date, time, origin, nature and designation, of such first use outside the State of Alabama.

ISSUE

Whether vehicles purchased by Corporation "A" that are handled and documented precisely as set out in Paragraphs 1-6 will be subject to imposition of the Alabama sales and/or use tax?

LAW AND ANALYSIS

Ala. Code ' 40-23-2(4) provides the following exemption from sales tax:

Sales of automobiles, motorcycles, trucks, truck trailers, or semitrailers that will be registered or titled outside Alabama, that are exported or removed from Alabama within 72 hours by the purchaser or his or her agent for first use outside Alabama are not subject to the Alabama sales tax. . . .

However, these exempt sales must be documented on a form approved by the Department, specifically the Automotive Vehicle Drive Out Certificate For Non-Residents, as set out in Sales and Use Tax Reg. 810-6-3-.42.03(1). Furthermore the certificate is required to be executed by both the seller and the purchaser, or purchaser's agent, at the time of the sale. A certificate issued subsequent to the sale is invalid, and will result in the imposition of the sales tax on the seller. See Sales and Use Tax Reg. 810-6-3.42.03(2). According to the information supplied by Corporation "A", set out in Paragraphs 1 through 6, the requirements of Ala.Code ' 40-23-2(4) will be met, if the Alabama seller and Corporation "A", as purchaser, execute a valid Automotive Vehicle Drive Out Certificate For Non-Residents, as outlined in Sales and Use Tax Reg. 810-6-3.42.03(1).

HOLDING

Based upon the particular facts of this case, the contemplated purchases will be exempt from the sales and/or use tax in accordance with Ala.Code ' 40-23-2(4), provided the Alabama seller and Corporation "A" or Corporation "A's" agent, as purchaser, execute a valid Automotive Vehicle Drive Out Certificate For Non-Residents as outlined in Sales and Use Tax Reg. 810-6-3-.42-.03(1).

JAMES P. HAYES, JR.