

ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 99-005

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: December 9, 1999

RE: Applicability of Alabama sales tax to a transaction involving goods picked up by the purchaser in the State of Alabama and taken to out-of-state destinations.

ISSUES AND FACTS

The facts as represented by Requestor are as follows:

Corporation "A", a wholly owned subsidiary of Company "B", has entered into a contract with Corporation "C" to refurbish or modify commercial aircraft owned or to be acquired by Corporation "C" (the "Contract"). The aircraft will be refurbished or modified by Corporation "A" in several states, including Alabama. The final portion of the refurbishment or modification will take place in Alabama. This portion of the contract will be performed by Corporation "D" in City "X", pursuant to an agreement with Corporation "A" ("the Agreement"). Although Company "B" has multiple facilities in Alabama, none of the work pursuant to the contract will be performed directly by Company "B" or Corporation "A" in this state. Rather, the only work performed in Alabama will be by Corporation "D" in City "X", pursuant to the Agreement.

The Agreement indicates that Corporation "D" shall perform conversion services on each aircraft using parts supplied by Corporation "A" with the exception of expendable and consumable materials which will be provided by Corporation "D". Corporation "A" will supply certain parts and materials while other parts and materials, in addition to consumables and expenditures, must be purchased by Corporation "D" from Corporation "A", Corporation "A" suppliers, or other authorized sources. Corporation "A" supplied parts will be furnished to Corporation "D" free of charge.

Expendable and consumable materials which must be provided by Corporation "D" are defined in the Agreement. Consumables are defined as all required shop supplies such as wiping rags, sanding disks, masking tapes, masking paper, greases, and sealants consumed or used during the conversion services. Expendable materials are defined as

required shop supplies such as expendable tools. The Agreement cites reamers and standard hardware such as fasteners and aerospace standard parts costing less than \$5.00 per unit consumed or used during the service as examples of expendable materials which must be supplied by Corporation "D".

In addition to the expendable and consumable materials, Corporation "D" must also provide all labor, facilities, equipment, fixtures, production control, technical planning and administration, inspection, tooling (except the necessary Corporation "A" unique tooling) and all other services necessary to perform its required service under the Agreement.

For purposes of this ruling, it may be assumed that all parts and materials supplied under the terms of the Agreement or Contract, other than consumables and expendables do not lose their separate identity when attached by Corporation "D" or others to the aircraft. It may also be assumed that Corporation "D" pays sales tax to its vendors upon the direct purchase of supplies, expendables, and consumables.

The Agreement provides that title to each aircraft delivered to Corporation "D" for the performance of conversion services shall remain with the aircrafts' registered owner (Corporation "C"). Corporation "C" shall at all times have full legal and beneficial ownership of the aircraft, except as otherwise provided in the Agreement. The Agreement and Contract provide that title to parts and materials supplied to Corporation "D" by Corporation "A" are purchased by Corporation "D" and resold to Corporation "A" and will remain with Corporation "A" until physical delivery of the aircraft to Corporation "C".

Upon completion of the conversion services on an aircraft, Corporation "D" will redeliver the aircraft to Corporation "A" at Corporation "D"'s facility. Under the current terms of the Contract, the subsequent redelivery of the aircraft from Corporation "A" to Corporation "C" shall also take place at the modification facility. The terms of the Contract are being modified to require delivery of the aircraft by Corporation "A" or its agent Corporation "C" at an out-of-state destination. Inspection and acceptance by Corporation "C" of the modification services will also occur out-of-state.

The modified terms of the Contract will also allow Corporation "A" to select the common carrier which will transport the aircraft out-of-state. Corporation "A", however, anticipates that Corporation "C" will be the sole common carrier selected for this purpose. The aircraft will be transported by the common carrier via standard bills of lading, f.o.b., point of origin or destination.

ISSUES

Whether the delivery of a Corporation "C" aircraft in Alabama, upon which parts and materials have been installed by or on behalf of Corporation "A", for Corporation "C" for transportation to an out-of-state destination for use by Corporation "C" is exempt from Alabama sales tax?

LAW AND ANALYSIS

The threshold question to be answered in determining the above issue is whether Corporation "C" picks up its own goods as a purchaser or as a common carrier. The Requestor is basically contending that Corporation "C" has a dual personality when it carries goods consigned to itself so that its role as a carrier is divorced from its role as purchaser. While there are no cases in Alabama which address this issue, the Illinois Supreme Court, in an analogous case, has decided this issue. In Pressed Steel Car Company, Inc. v. Lyons, 129 N.E.2d 765 (Ill. 1955), Pressed Steel Car Company, Inc., a manufacturer of railroad equipment, made sales to five railroads. All but one of the railroads placed their orders from their Chicago office and these orders were accepted at Pressed Steel's Chicago office. The goods were then shipped by Pressed Steel under a uniform straight bill of lading from one of its Illinois plants to the purchasing railroad at a destination outside of Illinois. Some of the orders stated that title, or title possession, should not pass to the consignee until the goods reached their destination, and some provided that the goods would be subject to inspection at destination. In each instance the purchasing railroad received the goods in Illinois. In some instances the goods were delivered to the purchasing railroad at the seller's plant. In others, the goods were originally delivered to another railroad and were turned over to the purchasing railroad at a junction point within Illinois. Pressed Steel argued against the tax measured by these sales based upon Article I, '8 of the United States Constitution, the commerce clause, and stressed that it was the intention of the seller and the purchaser that the goods sold were to be shipped to a destination outside of Illinois, and that the goods were actually so shipped. However, the Court noted that it appeared to be settled that a transaction by which a purchaser buys goods which are delivered to him within the taxing State may properly measure a tax, even though both parties know the goods are purchased for use outside of the State, and in fact are so used. Id. at 767. (Citations omitted).

Pressed Steel's basic contention was that what the railroads received in Illinois was no more than custody as a carrier, in that possession and disposition was deferred until the purchasing railroad, as carrier, had delivered the goods to itself, as purchaser, at the out-of-state destination. Id. This contention rested upon fact that in each instance the goods were shipped under a standard, uniform bill of lading requiring the railroads to deliver the supplies to themselves at an out-of-state destination. Id. at 767-768. Therefore, Pressed Steel argued, the railroads did not obtain possession of the supplies until such delivery was made. Id. at 767, 768.

However, the Court found inherent in this contention an assertion that the purchasing railroad had a dual personality when it carried goods consigned to itself, divorcing its role as carrier from its role as purchaser. Id. at 768. The Court then turned to consideration of factors of the relationship between the seller, Pressed Steel, and the purchasing railroads. The Court found that the railroads were technically obligated by their contracts with Pressed Steel to deliver the goods purchased to the destination named in the

bill of lading. However, the fact that the carrier was also the consignee made it difficult for the Court to see if any consequences would follow if the railroads found it more convenient to transport the goods to a destination other than that named in the bill of lading, either within or outside of Illinois. Because the carrier and the consignee are the same, there would be no problem reaching an agreement as to the substituted destination. Nor would there be an objection by the seller. Based on these considerations, the Court found that the use of a bill of lading, and the fact that Pressed Steel held title to the goods was not significant. Therefore, the Court found that when goods were sold within Illinois by Pressed Steel to a railroad which took physical delivery within Illinois, the transaction was subject to tax, notwithstanding the fact that, as to form, delivery within the State was to the railroad as the carrier under bill of lading for delivery outside the State to the same railroad as purchaser. Id. at 770. See also Department of Treasury v. Wood Preserving Corp., 313 U.S. 62 (1941).

Similarly, in the instant case, Corporation "A" is refurbishing or modifying commercial aircraft owned or acquired by Corporation "C". Corporation "C" is then to take physical delivery of the aircraft within Alabama. Thus Corporation "C" is picking up its own goods in Alabama as a purchaser and not as a carrier. Alabama is not in this instance compelled by the Commerce Clause of the Federal Constitution to treat carriers who carry outside the State the goods they purchase within it differently from other purchasers who did the same thing. In other words, the State is not compelled to treat Corporation "C" differently from another purchaser which purchased and received deliveries of goods within the State of Alabama, and intending to take them outside of the State, just because Corporation "C" is also a carrier. Thus, in so doing, the state does not recognize a dual personality on the part of Corporation "C". Therefore, the delivery of a Corporation "C" aircraft to Corporation "C" in Alabama, for transportation to an out-of-state destination for use by Corporation "C" is subject to Alabama sales tax.

HOLDING

Based on the particular facts of this case, the contemplated transaction between Corporation "C" and Corporation "A" is subject to Ala. Code ' 40-23-1, et seq., as the substance of the transaction is that Corporation "C" would be picking up its own goods as a purchaser and not as a common carrier.

JAMES P. HAYES, JR.

JPHJr:MJM:em