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ALABAMA DEPARTMENT OF REVENUE REVENUE RULING 95-010

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§40-2A-5(a) (1993 Replacement Volume).

TO:

FROM: Commissioner of Revenue
Alabama Department of Revenue

DATE: April 2, 1996

RE: Revenue Ruling 95-010
Contractors Gross Receipts Tax

ISSUE AND FACTS

XYZ Company ("XYZ") is engaged in the business of cleaning and repainting steel structure bridges. XYZ has been awarded contracts for the cleaning and repainting of steel structure bridges located within the State of Alabama.

Under the provisions of what is commonly referred to as the Contractors Gross Receipts tax found at §40-23-50, Code of Alabama 1975, XYZ has requested a Revenue Ruling concerning whether a contract to clean and paint steel bridges within the State of Alabama is subject to the tax.

LAW AND ANALYSIS

Section 40-23-50 levies a privilege license tax in pertinent part as follows:

Upon every person, firm or corporation engaged or continuing within this state in the business of contracting to construct, reconstruct or build any public highway, road, bridge, or street, an amount equal to five percent of the gross receipts derived from the performance of such contracts.

In Barron-Leggett Electric, Inc. v. Department of Revenue, 336 So.2d 1124 (Ala. Civ. App.), cert. denied, 336 So.2d 1128 (Ala. 1976), the "total purpose" concept was applied to tax a contractor who had contracted to install lights along certain


portions of specified highways, rather than applying the tax only to the cost of construction of the travelled portion of the highway. The installation of the lighting system was held to be without question a part of the total planned construction of the highway.

In Misener Marine Construction, Inc. v. Eagerton, 423 So.2d 161 (Ala. 1982), the tax, and the "total purpose" concept, was not applicable to the demolition and removal of old bridges. The Court was hesitant to extend the language of the statute to a removal project which was an integral part of a later construction project. The effect would be to make the subjective intent of the Highway Department the deciding factor in determining whether the tax is applicable.

Under the facts presented in the request, the cleaning and painting of steel bridges is certainly included within the "total purpose" of a highway or bridge construction contract. The "total purpose" concept incorporates a broad view of matters applicable to the construction of bridges. Clearly, at the time the tax was adopted by the Legislature it was contemplated that steel bridges would periodically require maintenance, which would include their cleaning and painting to prevent rust and deterioration.

HOLDING

In accord with the "total purpose" concept pronounced by the Court in Barron-Leggett Electric, Inc. v. Department of Revenue, supra, contracts for the cleaning and painting of steel structure bridges within the State of Alabama are subject to the privilege license tax found at §40-23-50, Code of Alabama 1975.


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