

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

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DOCKET NO. S. 90-256

ALTEC INDUSTRIES, INC.
210 Inverness Center Drive
Birmingham, AL 35242,

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Taxpayer.

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FINAL ORDER OF COMMISSIONER OF REVENUE

Pursuant to §41-22-16(a)(2), Code of Alabama 1975, a Recommended Order has been submitted to the Commissioner of Revenue by the Administrative Law Judge of the Department of Revenue in the above-styled action. Having reviewed the record, consisting of testimony recorded by a Certified Court Reporter, as well as exhibits, and the Recommended Order of the Administrative Law Judge, it is the opinion of the Commissioner that the Recommended Order of the Administrative Law Judge is due to be upheld, and therefore the following Order is due to be entered:

PRELIMINARY STATEMENT

The Revenue Department denied a petition for refund of lease tax filed by Altec Industries, Inc. (Taxpayer) concerning the period March 1, 1987 through February 28, 1990. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on September 20, 1990. Assistant counsel Dan Schmaeling appeared for the Department. Tommy L. Rains represented the Taxpayer.

FINDINGS OF FACT

The Taxpayer manufactures and repairs special purpose utility trucks at its facility in Birmingham, Alabama. The trucks are used to install or repair overhead utility wire or cable.

The Taxpayer also leases trucks for use by its customers while the customers' trucks are being repaired. The leases occur at the Taxpayer's facility in Birmingham. Some of the leased trucks are used in Alabama and some are used outside of Alabama by the Taxpayer's out-of-state customers.

The Taxpayer concedes that the trucks leased to its Alabama customers are taxable. The issue is whether the trucks leased by the Taxpayer to its out-of-state customers and subsequently used outside of Alabama are subject to Alabama lease tax.

CONCLUSIONS OF LAW

Alabama's lease tax is a privilege or license tax levied on every person or business engaged in leasing tangible personal property in Alabama. The tax is on the lessor and cannot be passed on to the lessee. See, Code of Ala. 1975, §40-12-220, et seq., and Department Reg. 810-6-5-.09(14).

The lease tax is a transactional tax and the taxable event is the leasing of property within Alabama. See, Boswell v. Paramount Television Sales, Inc., 282 So.2d 892 (1973). In this case, the Taxpayer leased the trucks in issue at its facility in Birmingham.

The transactions are thus taxable in Alabama even though the trucks were subsequently used outside of Alabama by the lessees.

Application of the Alabama lease tax to the transactions in issue also does not create an unequal or constitutionally impermissible burden on interstate commerce. The tax is applied equally to all of the Taxpayer's customers, both in-state and out-of-state. See, State v. Rockaway Corporation, 346 So.2d 444, at 450 (1977); and International Harvester Company Department of Treasury of State of Indiana, 322 U.S. 340, 64 S.Ct. 1019 (1944).

The above considered, the Department's denial of the Taxpayer's petition for refund is upheld. This is a Final Order and may be appealed pursuant to Code of Alabama 1975, §41-22-20.

Entered this 12th day of December, 1990.

JAMES M. SIZEMORE, JR., Commissioner