

ISLAND INTERIORS, INC.	§	STATE OF ALABAMA
3769 Gulf Shores Parkway		DEPARTMENT OF REVENUE
Gulf Shores, Alabama 36542,	§	ADMINISTRATIVE LAW DIVISION
Taxpayer,	§	DOCKET NO. S. 01-316
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed Island Interiors, Inc. (“Taxpayer”) for State sales and use tax, and also combined local (Baldwin County) tax for January 1996 through December 1998. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. Bart Adcock initially represented the Taxpayer. Ray Robbins represented the Taxpayer at a hearing conducted in Mobile, Alabama on August 18, 2004. Assistant Counsel Duncan Crow represented the Department.

The Department initially moved to dismiss the Taxpayer’s appeal as untimely. A hearing was conducted on the Department’s motion on August 14, 2001. The Administrative Law Division denied the Department’s motion by Preliminary Order dated August 23, 2001.

The Taxpayer subsequently filed its Answer explaining its position in the case. The case was scheduled for hearing on several occasions, but was continued to allow the parties time to settle the case. The parties failed to settle, and, as indicated, a hearing was conducted on August 18, 2004 in Mobile, Alabama.

The Taxpayer operated a retail furniture dealership in Baldwin County, Alabama during the period in issue. The Department audited the Taxpayer and determined that the Taxpayer had failed to properly collect sales tax on a number of retail sales because it

failed to obtain the purchaser's sales tax number concerning the sales.¹

The Taxpayer contends that it should not be held liable for tax on approximately 12 of the sales because either it obtained the purchaser's federal identification number, or the purchaser had claimed that it was purchasing the goods for resale. The Taxpayer argues that it has attempted to obtain information from the purchasers showing that the sales were for resale. Unfortunately, the purchasers were uncooperative and failed to provide any additional information to the Taxpayer.

A sale to a licensed retailer for resale constitutes a nontaxable wholesale sale. *State of Alabama v. Advertiser Co.*, 337 So.2d 942 (Ala. Civ. App. 1976); Code of Ala. 1975, §40-23-1(a)(9). To be tax-free, however, the wholesale purchaser must provide the seller with a valid sales tax account number. Dept. Reg. 810-6-4-.10 provides in part, as follows – “Any seller making sales at both retail and wholesale . . . must show on the invoice of such sales . . . the name and address and the sales tax account number of any such licensed retailer . . .” that is purchasing the item. The regulation further provides that “in the event that the name and address and such sales tax account number are not shown as herein provided, the Department of Revenue will treat such sale as a prima facie taxable retail sale.”

The Taxpayer in this case failed to obtain the purchasers' sales tax account numbers on the disputed purchases in issue. Rather, it either obtained the purchaser's federal tax identification number, or accepted the purchaser's verbal claim that the items were to be resold. That information is not sufficient, however, to relieve the Taxpayer of liability for tax on the undocumented sales. The fact that the purchasers had federal

¹ The Department also made other adjustments that are not disputed.

identification numbers in no way shows that they were in the business of reselling furniture at retail. And obviously, the purchasers' verbal claims that they intended to resell the items is not sufficient to overcome the presumption that the undocumented sales were prima facie taxable retail sales. See, Reg. 810-6-4-.10. Consequently, the Taxpayer must be held liable for State and Baldwin County sales tax on the disputed sales.

This case was previously submitted to the Department's Taxpayer Advocate for the purpose of determining if any part of the penalties or accrued interest should be waived or abated. The Taxpayer Advocate found on February 10, 2004 that there was not sufficient cause to waive either the penalties or interest. At the August 13 hearing, the parties agreed that the matter should be resubmitted to the Taxpayer Advocate for further review. Accordingly, a copy of this Order is being submitted to the Taxpayer Advocate for review. An appropriate Final Order will be entered after the Taxpayer Advocate responds.

This Opinion and Preliminary Order is not an appealable Order. The Final Order, when entered, may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered September 14, 2004.

BILL THOMPSON
Chief Administrative Law Judge