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| STATE OF ALABAMA<br>DEPARTMENT OF REVENUE, | § | STATE OF ALABAMA<br>DEPARTMENT OF REVENUE<br>ADMINISTRATIVE LAW DIVISION |
| v. | § | DOCKET NO. S. 91-134 |
| RAYPRESS CORPORATION<br>1426 Second Avenue North<br>Birmingham, Alabama 35203, | § | |
| Taxpayer. | § | |

## FINAL ORDER

The Revenue Department assessed State sales tax against RayPress Corporation (Taxpayer) for the period August 1, 1987 through July 31, 1990. The Taxpayer appealed to the Administrative Law Division and the matter was submitted an a stipulation of facts and briefs filed by the parties. Carleton P. Ketcham, Jr. represented the Taxpayer. Assistant counsel Beth Acker represented the Department. This Final Order is based on the facts and arguments presented by the parties.

## FINDINGS OF FACT

The Taxpayer is an Alabama corporation that prints and sells pressure sensitive labels. The labels in issue were sold by the Taxpayer to a manufacturer or retailer who affixed the labels to their product or product container and then sold the product and packaging at retail. The issue in dispute is whether the labels were sold by the Taxpayer at wholesale pursuant to Code of Ala. 1975, §40-23-1(a)(9)b. That section defines "wholesale sale" in part as a sale of tangible personal property that becomes an ingredient or component part of a manufacturer's final product, and

"the furnished container and label thereof". The three types of labels in issue are as follows:

(1). Address Labels -- These labels were applied by the Taxpayer's customer to deli sandwiches wrapped in clear plastic on a styrofoam or cardboard tray. The plastic wrap, tray and attached label were sold along with the sandwich at retail.

(2). Shipping Labels -- These labels were specially printed UPS shipping labels that were affixed to one time use containers used to ship products sold at retail.

(3). "Q.A. Approved for Shipment" Labels -- These labels were used for internal quality control purposes but remained affixed to the manufacturer's one time use containers and were sold at retail along with the product and container to show that the contents had been properly inspected.

In all three cases, the final product was sold at retail and sales tax was collected on the product and the labeled container.

The Department argues that only labels that identify or describe the enclosed product are exempt from sales tax as a wholesale sale under Code of Ala. 1975, §40-23-1(a)(9)b. and c. and related Regs. 810-6-1-.82, 810-6-1-.83, and 810-6-1-.137.

The Taxpayer argues that all labels that are affixed to a container and then sold along with the contents are tax free wholesale sales under the above statute.

## CONCLUSIONS OF LAW

Code of Ala. 1975, §40-23-1(a)(9) defines "wholesale sales" in

pertinent part as follows:

> b. A sale of tangible personal property or products, . . . to a manufacturer or compounder which enter into and become an ingredient or component part of the tangible personal property or products which such manufacturer or compounder manufactures or compounds for sale, . . . and the furnished container and label thereof, . . . (underline added).

The phrase "furnished container and label thereof" was not included in the above definition prior to 1939. Consequently, the sale of a container to a retailer was treated as a taxable sale for use by the retailer and not as a wholesale sale for resale. See, City Paper Company v. Long, 180 So. 324 (1938); Durr Drug Company v. Long , 188 So.2d 873 (1939); and Birmingham Paper Company v. Curry, 190 So. 86 (1939).

The "furnished container and label thereof" language was added in 1939. The purpose for the amendment was to allow retailers to purchase containers and labels tax free and then collect sales tax when the product and packaging are later sold at retail. The Court of Civil Appeals stated the intent of the amendment in State v. Toll Gate Garment Corporation, 352 So.2d 1361 (1977), as follows:

> The legislature then amended the statute defining wholesale sales by adding the language: "and the furnished container and label thereof." . . .
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> The additional phrase in question was interpreted by the supreme court in Alabama-Georgia Syrup Co. v. State, 253 Ala. 49, 42 So.2d 796 (1949) to refer to:
>
> > ". . . containers which are sold to manufacturers or compounder for use in packing their products for sale and which are sold by the manufacturer or compounder along with or

> as a part of their product." 253 Ala. at 53, 42 So.2d 799.

The court, in holding that the cartons were "furnished containers" within the meaning, of the statute and thus exempt from taxation, recognized the legislative intent behind the amendment:

> It seems reasonable to us that in making this change in the law the legislature recognized the impracticability of attempting to foresee the uses to which the containers would be put in the transition to manufacturers or compounders and then to their customers with the consequent uncertainty to the sellers of deciding when to collect and when not to collect taxes from their buyers." 253 Ala. at 53, 46 So.2d at 799.

Taxing statutes are to be construed in accordance with their real intent and meaning, and not so strictly as to defeat the legislative purpose. Alabama-Georgia Syrup Co. v. State, supra; Dixie Coaches v. Ramsden, 238 Ala. 285, 109 So. 92 (1939). We think that by amending the definition of wholesale sale after the three decisions City Paper Co. v. Long, Durr Drug Co. v. Long and Birmingham Paper Company v. Curry the legislature made clear its intent to postpone the taxing of containers until the final retail sale of the product.

The Department cites Poer v. Curry, 8 So.2d 418 (1942), as support for its position. The issue in Poer was whether battle caps used in bottling drinks constituted part of a "furnished container and label thereof". The Alabama Supreme Court held that the bottles and caps were not containers within the purview of the statute because the bottles were returnable to the seller and not sold at retail along with the contents.

The Court then ruled that the words "label thereof" referred to labels on the furnished container. The pertinent language in

Poer concerning labels is as follows:

> We are also of the opinion that the crowns, caps or tops are not exempt as "labels". First, it is to be noted that the exemption applies to "furnished containers and labels thereof." Labels thereof, in the same clause with furnished containers, refers to furnished containers. There being no furnished containers, the crowns, caps or tops have no field of operation as labels under the facts of this case.
>
> Second, if it be conceded that labels thereof, as used in the Act, refers to the contents of the bottle rather than furnished containers, the crowns, caps or tops here considered were never intended to serve the purpose of such label. Although they may bear the name of the drink contained in the bottle, their primary purpose is to serve as seals or stoppers, and not as labels, as the term is ordinarily used.

The Court concludes in the first paragraph above that the "label thereof" language refers to any label on a furnished container. Contrary to the Department's position, the term is not limited by the Court to labels that identify or describe the product. Rather, the term applies to all labels (address labels, price labels, advertising labels and others) if attached to and sold as part of a one time use container.

The Department mistakenly relies on the second paragraph as authority for its position. That paragraph, when read in context with the first paragraph, only points out that even if the term "label thereof" refers to labels identifying the contents of the container, a position rejected by the Court in the preceding paragraph, the caps would still be taxable because their primary function was not to identify the drink but rather to serve as

stoppers.

The phrase "furnished container and label thereof" should include all containers and all attached labels where the container and label are for one time use only and are sold at retail along with the final product. Department Regs. 810-6-1-.82, 810-6-1-.83, and 810-6-1-.137, to the extent that they hold that a label must identify or describe the product, are rejected. The Taxpayer's reasoning set out in the stipulation of facts is adopted as follows:

> There is no practical or common sense reason to differentiate between price labels and address labels on the one hand and so-called "descriptive" labels on the other. When such labels are permanently affixed to a one time use container for resale along with the contents thereof, the cost of the labels, stickers or tags is included in the ultimate cost of the final product sold and thus taxed. To levy a tax on such labels, stickers and tags when sold to a manufacturer or packager and then to tax the manufacturer or packager an the sale of the finished product which includes such labels, stickers and tags amounts to double taxation and is contrary to the legislature's intent.

The sales in issue were wholesale sales because the labels were subsequently sold at retail along with the container and enclosed product and sales tax was collected thereon. The fact that the "Q. A. Approved for Shipment" labels were used for internal quality control purposes prior to being sold along with the product would not affect their non-taxable status. Accordingly, the assessment in issue should be reduced and made final showing no additional tax due.

Entered on October 2, 1991.

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BILL THOMPSON
Chief Administrative Law Judge