

STATE OF ALABAMA,  
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

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vs.

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DOCKET NO. S. 91-221

MEDICAL CARE EQUIPMENT, INC.  
302 West Hickory Street  
Sylacauga, AL 35159,

§

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Taxpayer.

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FINAL ORDER

The Revenue Department assessed State, Talladega County and City of Sylacauga sales tax and also State lease tax against Medical Care Equipment, Inc. (Taxpayer) for the period April, 1988 through March, 1991. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on July 28, 1993. Calvin Whitesell, Sr. represented the Taxpayer. Assistant counsel Wade Hope represented the Department.

This case involves two issues: (1) Are gross receipts derived from Medicare subject to Alabama sales and lease tax; and, (2) Are oxygen concentrator machines exempt from the Alabama rental tax pursuant to Code of Ala. 1975, §40-23-4.1.

The relevant facts are undisputed.

The Taxpayer is in the business of leasing and selling durable medical equipment in Alabama. Most of the Taxpayer's customers are covered by Medicare B insurance.

When the Taxpayer rents or sells medical equipment to a Medicare customer, the Taxpayer bills Blue Cross and Blue Shield of

Alabama, which serves as the Medicare carrier and fiscal intermediary in Alabama. Blue Cross subsequently pays the Taxpayer 80% of a pre-determined amount for the equipment in question. The funds used to pay the claim are obtained by Blue Cross from the federal government's Social Security Trust Fund via the Health Care Financing Administration. The 20% balance is paid either by the individual customer or by supplemental C-plus insurance purchased by the customer from Blue Cross or some other insurance carrier.

The Taxpayer concedes that sales and lease tax is due on the 20% not paid by Medicare.

The Department audited the Taxpayer and used the Taxpayer's records to compute the assessments in issue. The Department included as taxable gross receipts for both sales and lease tax purposes those amounts received by the Taxpayer from Medicare. For lease tax purposes, the Department also assessed the gross receipts derived from the rental of oxygen concentrator machines.

For sales tax purposes, the Department auditor backed out the applicable tax from total gross receipts and assessed tax on the balance. The rental tax was assessed on the Taxpayer's total gross receipts.

The Taxpayer argues that the 80% paid by Medicare via Blue Cross cannot be taxed because the funds originated with the federal government. The Taxpayer also argues that the oxygen concentrator machines should be exempt from rental tax under the "prescription

drug" exemption found at Code of Ala. 1975, §40-23-4.1. I disagree with both arguments.

The Alabama sales tax is levied on the purchaser, with the seller obligated to collect and remit the tax to the State. Code of Ala. 1975, §40-23-26. The taxable event is the sale to the customer. Thus, unless the customer is specifically exempted, the sale is taxable. The fact that the federal government indirectly pays the tax or that the economic burden of the tax is passed on to the federal government is not relevant. State of Alabama v. King and Boozer, 62 S.Ct. 43, 314 U.S. 1.

The sales in issue were to the Taxpayer's individual customers, not to the federal government. Consequently, the Taxpayer is liable for sales tax on the gross receipts derived from those sales, regardless of where the gross receipts originated. The Department also properly backed out the sales tax from total gross receipts before arriving at taxable gross receipts.

The Taxpayer is also liable for lease tax on the entire gross receipts received from its Medicare customers. Again, it is irrelevant that the Medicare funds originated with the federal government. Also, the lease tax is on the lessor, not the customer. Consequently, the Department auditor properly computed the Taxpayer's lease tax liability on total gross receipts, without first backing out the lease tax.

Finally, the oxygen concentrator machines were not exempt under §40-23-4.1 because the machines were not "drugs" as defined by that statute. The Taxpayer argues that the oxygen produced by the machines should be construed as a drug under §40-23-4.1. However, the item being taxed is the machine itself, not the oxygen that is dispensed by the machine. In any case, §40-23-4.1 applies to sales tax only. Thus, even if the machines were exempt from sales tax under §40-23-4.1, the machines would not also be exempt from rental tax.

Durable medical equipment was exempted from sales, use and lease tax by Act 93-353. However, Act 93-353 does not become effective until October, 1994, and thus is not applicable in this case.

The assessments in issue are upheld, and judgment is entered against the Taxpayer for State sales tax in the amount of \$2,227.40, State lease tax in the amount of \$16,815.74, Talladega County sales tax in the amount of \$496.64, and City of Sylacauga sales tax in the amount of \$758.60.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered on January 21, 1994.

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BILL THOMPSON

Chief Administrative Law Judge