

STATE OF ALABAMA,
DEPARTMENT OF REVENUE,

vs.

JOHN DEERE COMPANY
John Deere Road, Tax Dept.
Moline, IL 61265,

Taxpayer.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET MISC. 92-168

FINAL ORDER

The Revenue Department assessed John Deere Company, Inc. (Deere) for lubricating oil tax for the period April, 1988 through March, 1991, and wholesale oil license tax for the period October, 1987 through September, 1990. Deere appealed both assessments to the Administrative Law Division and a hearing was conducted on June 11, 1992. Michael T. Petrik appeared for Deere. Assistant counsel Dan Schmaeling represented the Department.

FINDINGS OF FACT

Deere sells lubricating oil and other petroleum products at wholesale to independent retail dealers in Alabama and throughout the United States. Deere has no place of business and no permanent employees in Alabama.

The transactions in issue involved wholesale sales of lubricating oil by Deere to its independent dealers in Alabama. The sales evolved substantially as follows:

An independent Deere dealer in Alabama ordered lubricating oil from Deere in Atlanta. Deere then ordered the oil from its

supplier, Shell Oil in Louisiana. Shell Oil issued an invoice showing a sale of lubricating oil to Deere. However, the oil was never delivered to Deere. Rather, at the direction of Deere, Shell delivered the oil at its Louisiana facility to a common carrier that had been hired by Deere. The common carrier then delivered the oil to the dealer/buyer in Alabama.

Deere's standard contract with its independent dealers provides that title to the products sold by Deere passes to the dealers when the products are delivered by or on behalf of Deere to a common carrier. The dealer also bears the risk of loss during delivery, except where delivery is by parcel post or UPS. None of the lubricating oil in issue was delivery by parcel post or UPS.

CONCLUSIONS OF LAW

The Wholesale Oil License Tax Assessment

The wholesale oil license tax is levied at Code of Ala. 1975, §40-17-174 on any person making wholesale sales of lubricating oil in Alabama. State v. Pan-Am S. Corp., 89 So.2d 747. The issue in this case is whether the wholesale sales by Deere to the Alabama dealers occurred inside or outside of Alabama.

A sale occurs under Alabama law when title passes from the buyer to the seller. Code of Ala. 1975, §7-2-106(1). Title passes "unless otherwise specifically agreed" when the seller completes delivery of the goods to the buyer. Code of Ala. 1975, §7-2-

401(2). In this case, Deere and its independent dealers specifically agreed by contract that title to all products sold by Deere passed to the dealers when the products were delivered by or for Deere to a common carrier for delivery to the dealer. The sales in issue were thus completed outside of Alabama when the oil was delivered to the common carrier at Shell's facility in Louisiana. Consequently, the wholesale oil license tax does not apply.

The Lubricating Oil Tax Assessment

Code of Ala. 1975, §§40-17-171 and 40-17-220 levy a \$.02 per gallon and a \$.04 per gallon tax, respectively, on every distributor, manufacturer, retail dealer or storer engaged in selling, distributing or withdrawing from storage any lubricating oil in Alabama. The Department claims that Deere is a storer and therefore liable for lubricating oil tax on the transactions in issue because Deere caused the lubricating oils to be shipped into Alabama.

"Storer" is defined at Code of Ala. 1975, §40-17-170(5) as follows:

Any person who ships, causes to be shipped or brings into this state, or manufactures in this state, lubricating oils, as herein defined, in any quantity, stores the same in any container and withdraws same from storage for any purpose."

To be a storer under the above definition, a person must (1) either manufacture lubricating oil in Alabama or cause lubricating

oil to be shipped into Alabama, (2) store the oil in Alabama, and (3) withdraw the oil from storage in Alabama for any purpose.

Deere caused the lubricating oil in issue to be shipped into Alabama (even though title passed to the dealer outside of Alabama). However, Deere did not store the oil in Alabama and also did not withdraw the oil from storage in Alabama, both of which are necessary for Deere to be a storer pursuant to §40-17-170(5). Also, the lubricating oil tax is levied on the sale, distribution or withdrawal of oil from storage in Alabama. Again, Deere did not sale, distribute or withdraw oil from storage in Alabama, and consequently, is not liable for the lubricating oil tax in issue.

The Department points out that Deere obtained a lubricating oil license in Alabama after the period in issue and began making lubricating oil tax payments to the Department. However, the transactions that are the basis for the subsequent payments to Alabama are unrelated to the sales in issue and thus are not relevant.

The above considered, Deere is not liable for lubricating oil or wholesale oil license tax on the transactions in issue, and consequently both assessments are voided. This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered on November 13, 1992.

BILL THOMPSON
Chief Administrative Law Judge