

WARD INTERNATIONAL TRUCKS, INC.  
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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

Taxpayer,

DOCKET NO. S. 00-216

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

**FINAL ORDER DENYING  
DEPARTMENT'S APPLICATION FOR REHEARING**

A Final Order on Taxpayer's Application for Rehearing was entered in this case on December 5, 2000. That Order held that sales in Alabama to municipal school boards in Mississippi were exempt from Alabama sales tax pursuant to Code of Ala. 1975, ' 40-23-4(a)(15). The Department has filed an application for rehearing and an amended application for rehearing from the above Order. The applications are denied.

In its initial application, the Department argues at &3 that Code of Ala. 1975, ' 16-1-11 requires all private schools in Alabama, except church schools, to register annually with the Alabama Department of Education. The Department is correct, but that fact is irrelevant to the issue in question.

The Department argues in &4 that the Order uses the words Aof@ and Ain@ interchangeably, whereas the exemption only uses the word Aof.@ The Order does not use Aof@ and Ain@ interchangeably. The Order does use the word Awithin@ in the following sentence - AWhile the statute limits the exemption for educational institutions, state agencies, counties, and municipalities to only those entities within or of the State of Alabama, the exemption for county, city, and independent school boards is not so limited.@ The term Awithin@ is used only because the statute refers to Acounties within the state.@ In

any case, the Department's argument, even if it had been correct, is irrelevant to the issue.

Finally, the Department claims that if the Administrative Law Division's interpretation of '40-23-4(a)(15) is allowed to stand, the exemption at Code of Ala. 1975, '40-23-4(a)(11) would become meaningless. I disagree.

Section 40-23-4(a)(11) broadly exempts sales to the State of Alabama and counties and municipalities of the State. Section 40-23-4(a)(15) specifically exempts all educational institutions and agencies of the State and of the counties and municipalities within the State. If '40-23-4(a)(11) is now meaningless, as argued by the Department, then only educational institutions and agencies of the State and the counties and municipalities therein would be exempt, not the State, counties, and municipalities themselves. Clearly, such is not the case.

In its amended application for rehearing, the Department cites *State of Alabama v. Roberts Cafeteria, Inc.*, S. 87-179 (Admin. Law Div. 1/3/89) for the argument that it makes no sense that the Legislature would exempt sales to independent school boards of any state, but deny the same to private educational institutions located in Alabama.®

The relevant issue in *Roberts* was whether sales to a private college, Sanford University, were exempt from sales tax. The Administrative Law Division held that they were not.

The revenue code does not exempt or exclude sales to private schools from sales or use tax liability. The provision coming the closest is '40-23-4(a)(15). That section exempts sales to "county and city school boards, independent school boards and all educational institutions and agencies of the state of Alabama, the counties within the state or any incorporated municipalities of the state of Alabama".

The phrase "independent school boards" as used in the context of subsection (15) cannot be construed to include private schools, especially in light of the fact that all public educational institutions are specifically exempted. The Legislature could have easily included private educational institutions in the exemption section if it had intended to exempt such institutions from tax. Sanford University is a private school, not an independent school board, and is not exempt by statute from sales or use tax.

*Roberts*, at 3.

*Roberts* was correctly decided. Private schools are not exempted by '40-23-4(a)(15), but school boards are. Whether it makes sense to exempt independent school boards from other states, and not private educational institutions in Alabama, is up to the Legislature to decide, not the courts.

This Final Order Denying Department's Application For Rehearing may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, '40-2A-9(g).

Entered December 18, 2000.