

STATE OF ALABAMA,  
DEPARTMENT OF REVENUE,

vs.

RYAN AND BEAL, INC.  
2346 Midfield Drive  
Montgomery, AL 36102

Taxpayer.

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 93-246

FINAL ORDER

The Revenue Department denied a petition for refund of State, Houston County and City of Dothan sales tax filed by Ryan and Beal, Inc. (Taxpayer) for the period March 1, 1992 through September 30, 1992. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on September 14, 1993. CPA William G. Parker appeared for the Taxpayer. Assistant counsel J. Wade Hope represented the Department.

The issue in this case is whether the Taxpayer is liable for sales tax on the gross proceeds derived from public batting cages located in the City of Dothan during the period in question.

The Taxpayer contracted with the City of Dothan to construct batting cages on property owned by the City. The Taxpayer agreed to own and operate the facility for five years beginning February 1, 1987. The Taxpayer paid the City of Dothan \$500.00 per month during the five-year period for use of the land.

The parties also agreed that after the initial five-year period, "title to equipment and land shall revert to the possession

and control of the City and shall be operated by the City at the City's expense during an additional term of five years". See paragraph 1 of contract.

The Taxpayer operated the facility and reported and paid sales tax on the gross receipts derived from the facility from February 1987 through January 1992. However, instead of turning the facility over to the City of Dothan effective February 1992, the parties verbally agreed that the Taxpayer would continue operating the facility as before. The Taxpayer thus continued operating the batting cages and reporting and paying the gross receipts sales tax from February 1992 through September 1992.

The Taxpayer retained all gross proceeds derived from the facility during the period in question. The Taxpayer initially did not pay the City anything for use of the land, but later paid the City an undisclosed amount in early 1993.

The Taxpayer argues that the gross proceeds from the facility were exempt after February 1992 because the City owned the facility and it only managed the facility as agent for the City. I disagree.

The written contract between the parties stated that possession and control of the facility was to revert to the City beginning February 1992. However, that did not happen. Rather, the parties verbally modified the contract as allowed by paragraph 37 so that the Taxpayer would continue operating the facility. The

Taxpayer operated the facility and there is no evidence that the Taxpayer acted as agent for the City during the period in question.

Consequently, the Taxpayer properly reported and paid the gross receipts sales tax to the Department and no refund is due.

In addition, even if the gross receipts had been exempt, no refund could be issued because the Taxpayer collected the tax from its customers as part of the price. As between a retailer and the State, sales tax erroneously collected from the customer must be paid to the State. See, Code of Ala. 1975, §40-23-26(d); and also Ross Jewelry v. State 72 So.2d 409.

The refund in issue was properly denied by the Department. This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered on September 20, 1993.

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BILL THOMPSON  
Chief Administrative Law Judge