

SOUTHERN METALS COMPANY, INC. '
P.O. Box 471
Sheffield, AL 35660-0471, '

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer, '

DOCKET NO. U. 01-560

v. '

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed State and local use tax against Southern Metals Company, Inc. (ATaxpayer@) for May 1997 through April 2000. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, ' 40-2A-7(b)(5)a. A hearing was conducted on November 13, 2001. James Hughston represented the Taxpayer. Assistant Counsel Margaret McNeill represented the Department.

ISSUE

The issue in this case is whether the Taxpayer owes use tax on dies that it purchased from out-of-state vendors and subsequently used in Alabama to manufacture aluminum extrusions or parts for its customers.

FACTS

The Taxpayer is located in Sheffield, Alabama, and is in the business of manufacturing aluminum extrusions or parts for various customers. The parts are custom manufactured to exact dimensions as specified by the customers. The Taxpayer manufactures the parts using custom-ordered dies.

After receiving an order from a customer, the Taxpayer initially charged the customer a standard \$500 tooling fee. The Taxpayer then purchased the die needed to fill the order. The

Taxpayer's cost for the dies varied from customer to customer. The Taxpayer paid Alabama sales tax when it purchased a die from an Alabama vendor. It also paid use tax to those out-of-state vendors qualified to collect and remit Alabama use tax to the Department. It failed, however, to pay use tax on those dies purchased from out-of-state vendors not registered with the Department.

The Taxpayer used the die to make the parts ordered by the customer. It generally disposed of the die after the order was filled, although the Taxpayer's representative testified that it would have given a customer the die if requested.

The Department audited the Taxpayer, and assessed it for use tax on the previously untaxed dies purchased from the out-of-state vendors. The Department assessed the dies at the 12 percent Amachine® rate levied at Code of Ala. 1975, ' 40-23-61(b). The Taxpayer appealed.

The Taxpayer argues that the dies should not be taxed as machines. Rather, it claims that the dies are in effect being resold to its customers with the aluminum parts. The Taxpayer's notice of appeal states in part:

The assessments are being appealed on the basis that items, mainly extrusion dies, are being taxed in the same manner as machinery parts and equipment. The dies are in essence a mold or pattern and have a very short useful life. Extrusion dies should not be considered as machinery and equipment parts.

ANALYSIS

The Alabama use tax is levied on the use, storage, or consumption of tangible personal

property in Alabama. Code of Ala. 1975, ' 40-23-61. The reduced 1 2 percent Amachine@rate applies to property used in compounding, processing, or manufacturing tangible personal property. Section 40-23-61(b).

The Amachine@rate use tax clearly applies in this case because the Taxpayer used the dies in issue to manufacture aluminum parts at its facility in Alabama. The Taxpayer did not pay sales or use tax on the dies to another state. Consequently, the credit allowed at Code of Ala. 1975, ' 40-23-65 for sales or use tax paid to another state does not apply.

The Taxpayer did not purchase the dies as agent for its customers, nor did the Taxpayer resell the dies to its customers. The fact that a customer paid the Taxpayer a uniform \$500 tooling fee does not constitute a sale of the die to the customer. The Taxpayer generally disposed of the dies after an order was filled. The fact that the Taxpayer would have given a customer the die if requested does not establish that the dies belonged to, or were sold to, the customer.

In any case, even if the customers had held technical legal title to the dies, which they did not, the Taxpayer would still owe use tax on its use of the dies in Alabama. See generally, *Carlisle Engineered Products, Inc. v. State of Alabama*, U. 99-524 (Admin. Law Div. 4/17/00). (Use tax is owed on the use of property in Alabama, even if the user did not hold technical legal title to the property. *Associated Contractors v. Hamm*, 171 So.2d 385 (1965).)

The Taxpayer-s reference to molds and patterns is an apparent reference to Dept. Reg. 810-6-1-.93, which specifies that pattern makers that sell patterns to others can purchase the pattern materials tax-free. That regulation does not apply in this case because, as indicated, the Taxpayer did not sell the dies to its customers. See generally, *Robinson Iron Co. v. State*

of Alabama, S. 99-486 (Admin. Law Div. OPO 3/27/00). Rather, Reg. 810-6-2-.46 would apply. That regulation specifies that patterns used in the manufacture of tangible personal property are taxable to the user at the 12 percent machine rate, even though the patterns may pass to the manufacturer's customer after use by the manufacturer. . . . Reg. 810-6-2-.46(3).

The final assessments are affirmed. Judgment is entered against the Taxpayer for State use tax, penalty, and interest of \$8,608.87; and local use tax, penalty, and interest of \$3,621.88. Additional interest is also due from the date of entry of the final assessments, July 23, 2001 concerning the local assessment, and July 25, 2001 concerning the State assessment.

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

Entered December 19, 2001.