

CELLULAR PRO CORPORATION § STATE OF ALABAMA
3439A McGehee Road DEPARTMENT OF REVENUE
Montgomery, Alabama 36111, § ADMINISTRATIVE LAW DIVISION
Taxpayer, § DOCKET NO. S. 94-303
v. §
STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER
ON APPLICATION FOR REHEARING

An Opinion and Preliminary Order was entered in this case on January 30, 1995 holding that sales tax was due on the transactions in issue under the sales tax "withdrawal" provision, Code of Ala. 1975, §40-23-1(a)(9).

The Taxpayer applied for a rehearing, and a Final Order on Application for Rehearing was entered on June 14, 1995 upholding the applicability of the "withdrawal" provision. The ruling was applied prospectively only from the date of the Opinion and Preliminary Order, January 30, 1995. The Department subsequently applied for a rehearing on June 29, 1995.

On July 31, 1995, Governor Fob James signed into law Act 95-608. The effect of that Act is that cellular telephones and other equipment used in connection with commercial telephone services that are sold at retail at below cost are no longer subject to sales tax under the "withdrawal" provision. The Act is retroactive to all open tax years.

The Taxpayer in this case paid sales tax based on the amount received from the retail customer, which is the correct taxable

measure under Act 95-608. Consequently, based on Act 95-608, the final assessment in issue is dismissed.

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

Entered August 7, 1995.

BILL THOMPSON
Chief Administrative Law Judge