

INTERNATIONAL, INC.	§	STATE OF ALABAMA
152 Bo-Cole Road		DEPARTMENT OF REVENUE
Huntsville, Alabama 35806,	§	ADMINISTRATIVE LAW DIVISION
Taxpayer,	§	DOCKET NO. U. 95-201
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

FINAL ORDER

The Revenue Department assessed State and Madison County use tax against International, Inc. ("Taxpayer") for the period April 1990 through July 1993. The Taxpayer appealed to the Administrative Law Division, and a hearing was conducted on September 26, 1995. Onel C. Tucker represented the Taxpayer. Assistant Counsel Claude Patton represented the Department.

This is a use tax case. The issue in dispute is whether the Taxpayer purchased the materials in issue at retail outside of Alabama. If so, then the Taxpayer is liable for Alabama use tax on the subsequent use of those materials in Alabama.

The Taxpayer contracted with NASA to perform a construction project at Marshall Space Flight Center ("Marshall") in Huntsville, Alabama. The Taxpayer thereafter subcontracted with South Central Equipment Company ("SCECO") for SCECO to furnish and install certain materials on the project.

SCECO ordered the subject materials from VWR Scientific ("VWR") in Georgia. However, VWR subsequently invoiced the Taxpayer directly for the materials. The VWR invoice shows that the materials were sold by VWR to the Taxpayer for NASA job number

4612. The Taxpayer issued a check for the materials payable jointly to SCECO and VWR. SCECO endorsed the check and remitted it to VWR. The materials were thereafter shipped by VWR f.o.b. warehouse in Georgia to Marshall Space Flight Center in Huntsville.

The Department claims that the Taxpayer purchased the materials and is consequently liable for Alabama use tax on the use of the materials in Alabama. The Taxpayer argues that the subcontractor, SCECO, purchased the materials and thus is liable for the use tax in question.

The Alabama use tax is on the use, storage, or consumption in Alabama of tangible personal property previously purchased at retail outside of Alabama. Code of Ala. 1975, §40-23-60, et seq.

The subcontractor, SCECO, ordered the materials in question. However, the seller, VWR, invoiced the Taxpayer as the purchaser and billed the Taxpayer for the materials. The Taxpayer thereafter paid for the materials. Because the Taxpayer was invoiced for and obligated to pay for the materials, the Taxpayer must be considered as the purchaser of the materials. The Taxpayer elected the form of the transaction, and cannot now argue that the substance of the transaction should cause a different tax treatment. Estate of Leavitt v. C.I.R., 875 F.2d 420 (4th Cir. 1989). Consequently, the Department properly assessed the Taxpayer, as the purchaser of the materials, for the use tax in question.

The above considered, the final assessments are affirmed, and

judgment is entered against the Taxpayer for State use tax in the amount of \$8,138.98, and Madison County use tax in the amount of \$1,501.24. Additional interest is also due from the date of entry of the final assessments, March 10, 1995.

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

Entered November 1, 1995.

BILL THOMPSON
Chief Administrative Law Judge