

TRUCK CENTRAL OF DOTHAN, INC.	§	STATE OF ALABAMA
426 Merrill Road		DEPARTMENT OF REVENUE
Dothan, AL 36303-5846,	§	ADMINISTRATIVE LAW
DIVISION		
Taxpayer,	§	DOCKET NO. S. 02-166
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed Truck Central of Dothan, Inc. (“Taxpayer”) for sales tax for April 1998 through March 2001. 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 April 16, 2002. David Johnston and Paul Turner represented the Taxpayer. Assistant Counsel Wade Hope represented the Department.

ISSUES

The issue in this case is whether truck tractors sold by the Taxpayer during the subject period were exempt from Alabama sales tax pursuant to Code of Ala. 1975, §40-23-2(4). That statute in pertinent part exempts the sale of any automobile, truck, etc. if the vehicle “will be registered or titled outside of Alabama” and is “exported or removed from Alabama within 72 hours (of sale) by the purchaser or his or her agent for first use outside of Alabama. . . .” For the export exemption to apply, the information relevant to the exempt sale must be documented on forms approved by the Department. Two sub-issues are involved:

- (1) Does the exemption apply only to vehicles sold to nonresidents of Alabama; and,

(2) What are a motor vehicle dealer's duties and responsibilities in making exempt export sales?

FACTS

The Taxpayer operates a retail truck dealership in Dothan, Alabama. The Taxpayer sells truck tractors that are used in the long-haul trucking business.

The Department audited the Taxpayer for sales tax and discovered that the Taxpayer had failed to collect sales tax on 36 truck tractors sold to Alabama residents at its Dothan facility. All but two of the purchasers had executed "drive-out" certificates indicating that the vehicles would be registered or titled outside of Alabama, and would be removed within 72 hours for first use outside of Alabama.¹ Thirty-two of the certificates indicated that the vehicles would be titled or registered in Oklahoma, one indicated Illinois, and the other indicated Indiana.

The Department rejected the drive-out certificates because the purchasers resided in Alabama. It assessed the Taxpayer accordingly. The Department also argues that the Taxpayer improperly encouraged or suggested to the customers that they could register the vehicles in Oklahoma, and thereby escape Alabama sales tax.

ANALYSIS

The first issue is whether the §40-23-2(4) export exemption applies only to the sale of vehicles to nonresidents of Alabama. The statute does not limit the exclusion to only nonresident purchasers. However, the Department regulation pertaining to the exemption, Reg. 810-6-3-.42.02, is titled "Sales of Certain Automotive Vehicles to Nonresidents for First Use." Also, the drive-out certificate form set out in the regulation is titled "Automotive Vehicle Drive-Out Certificate

¹The Taxpayer concedes that tax is owed on two of the 36 vehicles because it cannot locate drive-out certificates for those trucks.

for Nonresidents.” But other than in the title of the regulation and the form, it is not otherwise required or mentioned that the purchaser must be an Alabama nonresident.

The Department argues that the Legislature intended the exemption to apply only to nonresident purchasers. However, the intent of the Legislature can only be gleaned from the language of the statute, and where a statute is unambiguous, the plain meaning must be followed. *Heater v. Tri-State Motor Transit Co.*, 644 So.2d 25 (Ala.Civ.App. 1994). A Department regulation cannot add to or limit the clear language of a statute. *Ex parte Uniroyal Tire Co.*, 779 So.2d 227 (Ala. 2000). As indicated, the statute does not directly or indirectly limit the exemption to only sales to Alabama nonresidents.

The Department also argues that its long-standing interpretation is that the exemption applies only to nonresidents. But that claim is contradicted by Rev. Ruling 99-003. In that Revenue Ruling, the Department concluded that an Alabama-based trucking company could execute drive-out exemption certificates for trucks purchased in Alabama that were later registered in Tennessee and removed from Alabama for first use within 72 hours. Consequently, the Department regulation and drive-out certificate, to the extent they limit the exemption to only nonresident purchasers, are rejected.

The Department also contends that the drive-out certificate form used by the Taxpayer was not identical to the Department’s form because it did not include a space in which the time of day the sale occurred could be recorded. But the specific time of day the sales occurred is not relevant in this case. The form used by the Taxpayer was computer generated, and has been used by the Taxpayer for years. It is identical in form and substance to the Department’s form, except for the time of day information. The Taxpayer’s certificates should

not be rejected only because they failed to include information that is irrelevant to the case.

As a practical matter, the exemption will still apply primarily to nonresidents because Alabama residents generally register their vehicles in Alabama. But there may be instances in which an Alabama resident buys a vehicle in Alabama, but legitimately registers it in another state. For example, a truck owner/operator may reside in Alabama but haul for an out-of-state trucking company. In that case, the trucking company may require a truck purchased by the owner/operator in Alabama to be registered outside of Alabama in the trucking company's base state. See also, Rev. Ruling 99-003, *infra* at 3, in which an Alabama-based trucking company purchased trucks in Alabama and then legitimately registered them in Tennessee. In the above examples, the resident purchasers would be or were entitled to the export exemption.

Construing the statute to apply to nonresidents only, and not to otherwise similarly situated Alabama residents, may also raise a constitutional equal protection argument. But that issue need not be addressed because by the plain language of the statute, any resident or nonresident purchaser that meets the criteria is entitled to the exemption.

A second and more difficult question involves a motor vehicle dealer's responsibility in making an exempt export sale. Retailers generally know when they make a sale whether the transaction is exempt or nontaxable, i.e. that the sale is a nontaxable wholesale sale, is to a tax-exempt entity, etc. The motor vehicle export exemption is different because the events necessary for the exemption to apply occur after the sale is completed. Consequently, in determining at the time of sale if the exemption applies, a motor vehicle dealer must necessarily rely on the purchaser's claim that the vehicle will be registered or titled outside of Alabama and removed from Alabama for first use within 72

hours. The Department concedes that if a dealer relies on a customer's claims in good faith, the dealer is not required to follow up and verify that the customer actually satisfies the criteria for the exemption.

As indicated, however, the dealer must rely on the customer's claims in good faith. A dealer's duty in that regard is analogous to the duty of a retailer making a nontaxable wholesale sale. Before making a wholesale sale, a retailer is required to know the general nature of the customer's business. If the customer is in the business of reselling the property in question, the retailer is not required to follow up and insure that the property is in fact resold. *Merriweather v. State*, 42 So.2d 465 (Ala. 1949); *Cody v. State Tax Commission*, 177 So. 146 (Ala. 1937).

Likewise, a car dealer cannot blindly allow any purchaser to claim the export exemption. If the purchaser is an out-of-state resident, the dealer can reasonably accept the purchaser's claim that the vehicle will be removed from Alabama within 72 hours and registered in another state, unless the dealer has reason to know otherwise.

Concerning sales to Alabama residents, however, a dealer should be on alert because vehicles purchased by Alabama residents are generally titled in Alabama, in which case the exemption would not apply. But as discussed earlier, the export exemption may still apply in some instances to vehicles purchased by Alabama residents.

Turning to this case, the issue is whether the Taxpayer acted reasonably and in good faith in accepting the drive-out certificates in question. A brief overview of how commercial trucks are registered will help the reader understand this issue.

Since 1978, Alabama has participated in the International Registration Plan ("IRP"). The IRP is an agreement entered into by most states whereby a

truck operating commercially in more than one state is required to register in only one “base jurisdiction” state. A truck’s “base jurisdiction” is where the registrant has an established place of business, i.e. a physical structure owned or leased by the registrant, and where the registrant actively conducts business and maintains its records.² The truck owner reports and remits to the base jurisdiction state the applicable fees owed to all of the states in which it operates. That base state then apportions the fees pro rata among the various states based on miles traveled in each state.

In the mid-1990's, Alabama and other states became aware that numerous truck owners were improperly using “tag and title agents” in Oklahoma to register their vehicles in that State, even though Oklahoma was not their base jurisdiction. The states complained to the IRP, which deemed Oklahoma out of compliance and sanctioned it in 2001.

Alabama has also recently begun citing truck drivers for operating trucks in Alabama that were improperly registered in Oklahoma. Eight of those drivers appealed to the Mobile County District Court. After a consolidated hearing, the District Court held that the trucks in issue had been improperly registered in Oklahoma, and thus affirmed the citations. See, *State of Alabama v. Matthew Cunningham, et al.*, Case No. DC-2002-1918, Mobile District Court, July 26, 2002.

²A trucking company may have more than one base jurisdiction state. For example, in Rev. Ruling 99-003, the company was headquartered in Alabama, but its facility in Tennessee also apparently qualified that state as a base jurisdiction. If a company has more than one base jurisdiction state, it may elect which state to register in for IRP purposes. The company in Rev. Ruling 99-003 obviously selected Tennessee.

I agree, based on my limited knowledge of the IRP, that if a truck owner does not have a base jurisdiction in a state, the truck cannot be legally registered in the state for IRP purposes. The issue in this case, however, is not whether the trucks in issue were improperly registered in Oklahoma. Rather, the question is whether the Taxpayer accepted in good faith its customers' claims that the trucks would be registered in Oklahoma.

Stan Peters has been the Taxpayer's sales manager since late 1995. Peters testified that soon after he took over as sales manager, he learned that many of his customers were using title agents to register their vehicles in Oklahoma. He inquired with other dealers in Alabama, who told him the use of Oklahoma title agents was common. Consequently, while Peters knew that his customers could avoid Alabama sales tax by registering their trucks in Oklahoma, he thought the practice was legitimate.

The Department asserts in effect that Peters conspired with Oklahoma titling agents by encouraging his customers to use the Oklahoma agents, and thereby avoid Alabama sales tax. The Department auditor could not confirm, however, that Peters encouraged his customers to use Oklahoma agents, nor is there any other evidence supporting that claim.

Peters testified that while he has known about the Oklahoma titling agents since 1995, he has never been contacted by a titling agent, and has never recommended that a customer use an Oklahoma title agent. He explained that many of his customers had previously registered trucks through agents in Oklahoma, and thus were already aware of the agents when they purchased the trucks in issue. In any case, the Department auditor also testified that there is nothing wrong with an Oklahoma agent encouraging Peters to have his customers register their trucks in Oklahoma, and that if a truck was actually

registered in Oklahoma and removed from Alabama for first use within 72 hours, the exemption would apply. (T. 123, 124.)

The Department also claims that the subject vehicles were not removed within 72 hours for first use outside of Alabama because the purchasers were Alabama residents. What the Legislature intended by the phrase “first use outside of Alabama” is unclear. Obviously, the phrase cannot refer to when a vehicle is first driven by the owner because every “first use” would be in Alabama when the customer drove the vehicle off the dealer’s lot, in which case the exemption would never apply. Concerning commercial vehicles such as those in issue, “first use” could reasonably be construed as when the vehicle is first used to haul goods commercially.

The customers in issue were all long distance interstate carriers with valid ICC numbers. Many drove for trucking companies based outside of Alabama. It was thus reasonable that the Taxpayer would take the customer’s word that the truck would be removed from Alabama for first use within 72 hours. Further, there is no evidence that any of the trucks were not removed from Alabama for first use within 72 hours.

I applaud the Department’s effort to crackdown on the improper registration of trucks in Oklahoma.³ But until recently, the use of Oklahoma title agents to “create” a base jurisdiction in that State was widespread. The IRP began investigating Oklahoma in the 1990’s, but there is no evidence that truck owners subject to the IRP were ever put on notice that the use of Oklahoma titling agents was improper. And certainly there is no evidence that the Taxpayer

³Several Oklahoma Tax Commission officials have recently been indicted on bribery and other charges concerning their dealings with the Oklahoma titling agents. As a result, the Tax Commission’s motor vehicle division has undergone a major shakeup, and the State has banned out-of-state trucking companies from using agents to register in the State.

or any other Alabama truck dealers were notified that they should not accept drive-out certificates from customers intending to register their vehicles through title agents in Oklahoma. Consequently, while Peters obviously knew that his customers were avoiding Alabama sales tax by registering their vehicles in Oklahoma, he reasonably believed that the widespread practice was legal.⁴

The tax on the 34 vehicles for which the Taxpayer provided properly executed drive-out certificates is voided. The Department is directed to notify the Administrative Law Division of the tax, penalty, if applicable, and interest due on the two vehicles for which drive-out were not provided. A Final Order will then be entered for the adjusted amount due.

This Opinion and Preliminary Order is not appealable. The Final Order, when entered, may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered August 21, 2002.

⁴Despite Oklahoma's crackdown on the use of title agents, it may still be advisable that Alabama truck dealers should be warned not to accept a drive-out certificate unless they know that the truck has a base jurisdiction outside of Alabama.

The export exemption at §40-23-2(4) applies only to sales tax, and not to use tax. Consequently, the Department may also assess the truck owners for use tax, if applicable, on their use of the trucks in Alabama. See, *Glenn McLendon Trucking Co. v. State of Alabama*, S. 01-206 (Admin. Law Div. 11/29/01).