

NAMEADSMA
4910 University Square, Suite 3
Huntsville, Alabama 35816,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 96-385

FINAL ORDER

The North Atlantic Medium Extended Air Defense Management Agency ("NAMEADSMA") applied with the Department for a sales and use tax exemption certificate. The Department denied the certificate, and NAMEADSMA appealed to the Administrative Law Division. A hearing was conducted on February 4, 1997. Nancy Holzwanger represented NAMEADSMA. Assistant Counsel Wade Hope represented the Department.

The issue in this case is whether NAMEADSMA is in substance an agency of the U.S. Government, and thus exempt from Alabama sales and use tax pursuant to Code of Ala. 1975, § 40-23-4(a)(17) and the United States Constitution.

NAMEADSMA is an agency created and chartered through the North Atlantic Treaty Organization ("NATO") for the purpose of designing, developing, and producing a medium extended air defense system. NAMEADSMA is headquartered in Huntsville, Alabama, and is directly funded by the three participating NATO members, Germany, Italy, and the United States. The United States provides 60 percent of the funds, and by agreement would be required to pay 100 percent of all taxes assessed against

NAMEADSMA in the United States.

NAMEADSMA applied with the Department for a sales and use tax exemption, claiming that it is an exempt agency of the United States Government. The Department denied the exemption because a "Memorandum of Understanding" (State Ex. 1) between the participating countries implied that taxes may be assessed against NAMEADSMA. NAMEADSMA offered additional documents at the February 4 hearing establishing the nature of its relationship with the United States Government and NATO. Those documents establish that NAMEADSMA was created by the participating nations through NATO, and as such acts as a de facto agency of those nations. NAMEADSMA is thus exempt from Alabama sales and use tax. The exemption applies, however, only to direct purchases by NAMEADSMA. Purchases by contractors or others working for NAMEADSMA would not be exempt.

The Department indicated that it might change its position and grant the exemption based on the documents submitted by NAMEADSMA at the February 4 hearing. The Department was directed to review the documents and respond by May 9, 1997, but failed to do so. I take the Department's failure to respond as its acquiescence in granting the exemption. The Department is accordingly directed to issue NAMEADSMA a sales and use tax certificate of exemption in due course.

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

Entered May 29, 1997.

BILL THOMPSON
Chief Administrative Law Judge