

BEAR MGC CUTLERY CO., INC.
P.O. Box 399
Jacksonville, AL 36265-0399,

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

DOCKET NO. U. 97-419

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed use tax against Bear MGC Cutlery Company, Inc. ("Taxpayer" or "corporation") for August 1993 through July 1996. 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 December 11, 1997. Assistant Counsel J. Wade Hope represented the Department. CPA Charles E. King represented the Taxpayer.

The issue in this case is whether the corporation should be allowed to purchase tangible personal property tax-free using a tax abatement issued to a partnership, Bear MGC Properties, pursuant to Code of Ala. 1975, 40-9B-1, et seq. The partnership was formed and solely owned by the corporation's stockholders.

The facts are undisputed.

The Taxpayer was incorporated by three individuals ("owners") in 1992. The corporation was created to refurbish and operate a defunct cutlery manufacturing facility in Jacksonville, Alabama.

The owners of the corporation wanted to expand the facility. Consequently, for tax and liability purposes, they formed a partnership, Bear MGC Properties. The owners intended that the partnership would purchase land and build the new facility. The

partnership would then lease the facility to the corporation. The corporation would operate the facility, and purchase and own the machinery to be used in the facility.

The City of Jacksonville, working with the owners, issued an abatement of taxes to the partnership on April 12, 1993 pursuant to 40-9B-1, et seq. The City and the partnership thereafter executed an "Abatement Of Taxes Agreement", in which the partnership agreed to build the new facility, and the City agreed to abate all applicable taxes. A projection attached to the agreement, on the corporation's letterhead, listed the new equipment needed for the facility. The application for abatement also estimated the cost of the new machinery to be \$220,800.

The partnership submitted the Agreement to the Department, and the Department thereafter issued a direct pay permit to the partnership.¹

The partnership properly purchased the materials used to build the new facility tax-free using the direct pay permit. The corporation also used the direct pay permit to purchase tax-free the new equipment to be used in the facility.

The Department audited the corporation, determined that the corporation had improperly used the abatement and direct pay permit, and accordingly assessed the tax in issue. The Department contends that the corporation cannot use the abatement

¹A direct pay permit allows the holder to purchase all tangible personal property tax-free. The holder is then required to file monthly returns and report and pay tax on all taxable purchases during the preceding month.

because the abatement was issued to the partnership, a separate entity. I must agree.

Unquestionably, the City of Jacksonville and the owners intended that the abatement would apply to both the materials used to build the facility, and the equipment to be used in the facility. Unfortunately, what was intended does not control over how the transactions were actually executed.

The partnership in question was a separate and distinct legal entity from the corporation, and thus must be treated as a separate entity for tax purposes. Ex Parte Capitol City Asphalt, Inc., 437 So.2d 1291 (Ala. 1983)(separate but related corporations owned and operated by the same individuals must be treated as different taxpayers for sales tax purposes). Having created the partnership as a separate legal entity for tax and liability purposes, the owners cannot now claim that the corporation and the partnership are the same for purposes of the abatement.

The Department has a stated policy of promoting business development in Alabama through the use of abatements. However, the duty is on a business to properly acquire and use an abatement, and the Department cannot allow one legal entity to use an abatement issued to another legal entity. Consequently, the final assessment in issue must be affirmed.

Judgment is entered against the Taxpayer, Bear MGC Cutlery, Inc., for \$3,775.18, plus applicable interest.

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

Entered January 26, 1998.

BILL THOMPSON
Chief Administrative Law Judge

BT:ks

cc: J. Wade Hope, Esq.
Charles E. King, CPA
Earl Hilyer