

ALABAMA PLASMA, INC.
1128 Main Street
Cincinnati, Ohio 45210,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 99-329

FINAL ORDER

Alabama Plasma, Inc. (ATaxpayer®) applied to the Revenue Department for a sales tax exemption certificate. The Department denied the application. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, ' 40-2A-8(a). A hearing was conducted on September 7, 2000. Will Sellers represented the Taxpayer. Assistant Counsel Margaret McNeill represented the Department.

ISSUE

The issue in this case is whether the Taxpayer is entitled to an Alabama sales tax exemption certificate. That issue turns on whether the Taxpayer is selling its product, source plasma, within the purview of the Alabama sales tax statutes, Code of Ala. 1975, ' 40-23-1, et seq.

FACTS

The Taxpayer operates plasma collection centers in Alabama. Plasma is the liquid part of human blood.

The Taxpayer first screens a prospective blood donor to insure that the donor is healthy. Blood is then drawn from the donor's arm through a needle. The blood flows from the needle through a tube, into a haemonetics machine.

The haemonetics machine contains a centrifuge bowl. The machine spins the blood, which causes the heavier parts of the blood, the red and white blood cells, to go to the outside of the bowl. The plasma, which is the lighter part of the blood, remains in the center of the bowl.

As more blood flows into the bowl, the plasma is forced out of the bowl and into a pooling bag. After the plasma is collected, the machine is reversed and the remaining blood is returned to the donor.

Sodium citrate is mixed with the blood as it flows into the bowl. The sodium citrate prevents the blood from clotting, and is separated with and remains as part of the plasma.

The collected source plasma is frozen. Samples of the plasma are tested for HIV, hepatitis, and other diseases to insure its safety. The frozen plasma is then separated into bags and labeled *Non-injectable* and *For manufacturing use only.* The Taxpayer sells the plasma to a customer outside of Alabama. The Taxpayer delivers the plasma to the out-of-state customer in special refrigerated vehicles.

The customer fractionates or processes the plasma into six types of therapeutic proteins. The proteins are further purified, freeze-dried, and sold to clinics, doctors, hospitals, etc. as prescription-only medicines. None of the medicines are injected into humans.

ANALYSIS

An overview of when a taxpayer should be issued an Alabama sales tax license, an exemption certificate, or neither, will help the reader understand the case.

A taxpayer that makes retail sales in Alabama is required to obtain an Alabama sales tax license. Code of Ala. 1975, ' 40-23-6. A sales tax license allows a retailer to purchase at wholesale all property, including ingredient or component parts, that it intends to resell. A retailer cannot, however, use its sales tax license to purchase tax-free supplies and other items that are used or consumed, and not resold. If a retailer also manufactures or processes its final product, all machines used in manufacturing or processing the product are taxed at a reduced 12 percent Amachine@rate. Code of Ala. 1975, ' 40-23-2(3).

A taxpayer should not be issued a sales tax license if it does not make retail sales in Alabama. But if the taxpayer manufactures products in Alabama that it sells either outside of Alabama or at wholesale in Alabama, the taxpayer should be issued an Alabama sales tax exemption certificate. See, Dept. Reg. 810-6-5-.02. The exemption certificate would allow the taxpayer to purchase at wholesale all property that becomes a part of the final product sold by the taxpayer. The manufacturer would still be required to pay tax on all property that is used or consumed, and not resold. Again, machines used in manufacturing or processing a final product would be taxed at the reduced 12 percent Amachine@rate.

A taxpayer is not entitled to either a sales tax license or an exemption certificate if it is not selling a product.

Is the Taxpayer in this case entitled to an Alabama exemption certificate? That depends on whether the Taxpayer is selling the source plasma for sales tax purposes. As discussed, if the Taxpayer is not selling the plasma, it is not entitled to an exemption

certificate (or a sales tax license). If the Taxpayer is selling the plasma, it should be issued an exemption certificate.¹

Alabama sales tax is levied on the sale of tangible personal property. Code of Ala. 1975, ' 40-23-2(1). A Sale² is defined for sales tax purposes as every closed transaction constituting a sale. Code of Ala. 1975, ' 40-23-1(a)(5).² Source plasma is tangible personal property, and the Taxpayer is selling the plasma to its customer.

The Department contends, however, that the Taxpayer is not selling the plasma for Alabama sales tax purposes based on *Community Blood and Plasma Service, Inc. v. State*, 267 So.2d 176 (Ala.Civ.App. 1972). The taxpayer in *Community Blood and Plasma* operated a for-profit blood bank in Alabama. The taxpayer drew whole blood from donors

¹If the Taxpayer is selling the plasma, it should be issued an exemption certificate and not a sales tax license because it is not making taxable retail sales in Alabama. The sales are closed when the Taxpayer delivers the source plasma to the customer outside of Alabama. See, Code of Ala. 1975, ' 40-23-1(a)(5). Even if the Taxpayer made sales in Alabama, such sales would be at wholesale because the Taxpayer's customer is reselling the plasma-based products.

²The Legislature unfortunately used the word being defined, A sale,² in the definition. It is generally accepted, however, that a Sale² is the passing of title from the seller to the buyer for a price. Code of Ala. 1975, ' 7-2-106(1). See also, *State v. Delta Air Lines*, 356

and sold the blood primarily to hospitals. The blood was then transfused into patients. The issue was whether the taxpayer's transfer of the blood was a sale or a service for sales tax purposes.

The Court of Civil Appeals first cited a Florida Supreme Court case which held that the transfer of blood was a sale, not a service. *Community Blood Bank, Inc. v. Russell*, 196 So.2d 115 (Fla. 1967). The Court declared that it agreed with the rationale of the Florida Supreme Court. However, the Court then stated that the case was controlled by Code of Ala. 1975, '7A-2-314(4) (now '7-2-314(4)). That statute reads as follows:

(4) Procuring, furnishing, donating, processing, distributing, or using human whole blood, plasma, blood products, blood derivatives, and other human tissues such as corneas, bones or organs for the purpose of injecting, transfusing, or transplanting any of them in the human body is declared for all purposes to be the rendition of a service by every person participating therein and whether any remuneration is paid therefor is declared not to be a sale of such whole blood, plasma, blood products, blood derivatives, or other human tissues.

The Court recognized that '7-2-314(4) involved implied warranty. However, relying on the language of the statute that such use of blood or blood derivatives is declared for all purposes to be a service, the Court applied the statute for sales tax purposes. The Court thus held that the sale of the blood was a nontaxable service.

Does the rationale of *Community Blood and Plasma* apply in this case? As discussed, the taxpayer in *Community Blood and Plasma* provided the blood to hospitals,

So.2d 1205 (Ala. 1978).

which transfused the blood into patients. Section 7-2-314(4) applied because the blood was transfused into humans.

This case, however, can be distinguished factually because the source plasma in issue is never injected or transfused into the human body. Section 7-2-314(4) applies only if the blood or blood product is procured, furnished, etc. for the purpose of injecting, transfusing, or transplanting . . . into the human body. Because the source plasma, and the various medicines into which it is processed, is never injected or transfused into the human body, ' 7-2-314(4) does not apply.

Judge Holmes broadly stated in *Community Blood and Plasma* that it is clearly a legislative expression that the activity of procuring, furnishing, donating, processing, distributing, or using human whole blood, plasma, blood products, etc. is to be a service by every person participating therein. @ *Community Blood and Plasma*, 267 So.2d at 179. Implicit in that statement, however, is that the blood or blood product must be injected or transfused into the human body, as was the case in *Community Blood and Plasma*. That critical fact is not present in this case.

Because ' 7-2-314(4) does not apply, I agree, as did the Court of Civil Appeals, that the rationale of the Florida Supreme Court in *Community Blood Bank v. Russell* should control. That is, the Taxpayer is selling the plasma within the purview of the Alabama sales tax statutes.

Because the Taxpayer is selling the source plasma, it should be issued an Alabama exemption certificate. However, the only property the Taxpayer can purchase tax-free is

the sodium citrate that becomes an ingredient or component part of the source plasma³, and the bags and labels in which the plasma is sold. Code of Ala. 1975, ' 40-23-1(a)(9)c.

The Taxpayer is required to pay Alabama sales tax (or use tax) on all other tangible property purchased or used in Alabama. The Taxpayer can purchase all machines used in processing the source plasma at the reduced 12 percent Amachine@rate. Items subject to the Amachine@rate include the needles and tubing used to draw blood, the haemonetics machine and attachments used to separate the plasma, and the bags into which the processed plasma is collected. Property used to examine or test the donor before the blood is drawn does not directly involve the processing of the plasma, and thus is not subject to the Amachine@rate. See, Indiana Department of State Revenue, LOF 96-0317, Supplemental Letter of Finding, issued 2/18/98, at page 5.

Testing the plasma after it leaves the haemonetics machine to insure its safety is an integral and necessary part of the processing of the plasma. Consequently, items used for that purpose are also taxable at the reduced 12 percent Amachine@rate. See, Indiana Department of State Revenue, LOF 96-0317, Second Supplemental Letter of Finding, issued 2/18/98. See also, *State of Alabama v. Phifer Wire Products, Inc.*, U. 85-179 (Admin. Law Div. 5/21/86) (machine used to test tensile strength, brittleness, etc. of wire products manufactured by a taxpayer was a Amachine@used in processing the products).

³The Taxpayer's chief operating officer testified at the September 7 hearing that the sodium citrate becomes part of the plasma. (T. at 25). However, an attachment to the Taxpayer's application for an exemption certificate states that a small amount of anticoagulant is added to the red blood cells, which are then re-injected into the donor through the hollow needle. That statement indicates that the anticoagulant, i.e. sodium citrate, is re-injected into the donor, and thus does not become a part of the plasma. If that is the case, the sodium citrate would be taxable at the 12 percent Amachine@rate.

The Department is directed to issue the Taxpayer an Alabama sales tax exemption certificate, which the Taxpayer may use as indicated above.

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

Entered October 13, 2000.