

ROBERT R. WILLIAMS CO., INC.
3650 Old Shell Road
Mobile, AL 36608-1325,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 99-514

FINAL ORDER

The Revenue Department assessed Robert R. Williams Company, Inc. (Taxpayer) for State sales tax and Baldwin County use tax for June 1995 through May 1998. 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 August 8, 2002 in Mobile, Alabama. Bob Galloway represented the Taxpayer. Assistant Counsel Duncan Crow represented the Department.

ISSUE

The Taxpayer is a commission sales agent for the Trane Company of LaCrosse, Wisconsin. Trane sells commercial air conditioning systems, and is a division of American Standard Corporation. The issue in this case is whether the Taxpayer is liable for State sales tax and Baldwin County use tax on certain Trane air conditioning equipment sold by the Taxpayer in Alabama as agent for Trane.

FACTS

The Taxpayer is based in Mobile, Alabama. As indicated, it is a commission sales agent for Trane. In a typical transaction during the audit period, a salesman employed by the Taxpayer called on a customer, generally a hospital, in South

Alabama. If the customer purchased the Trane equipment offered by the salesman, the customer would issue a purchase invoice to Trane in Wisconsin. If Trane approved the purchase order, it would issue an invoice to the customer, with a copy to the Taxpayer. Trane then delivered the equipment to the customer, which paid Trane directly for the equipment. Trane in turn paid the Taxpayer a sales commission on the transaction. American Standard also reported and paid sales tax on the sale to Alabama. The above transactions are not in issue.

The tax in issue is based on 16 non-typical transactions involving: (1) discounts; (2) warranties; and, (3) additional non-Trane equipment sold to the customers by the Taxpayer.

(1) Discounts.

The parties sometimes negotiated a customer discount for prompt payment. Trane ultimately allowed the discount, but refused to show the discount on its invoice. Because some customers needed an invoice showing the discount, the Taxpayer issued a second Trane invoice to the customers showing the discount. The Taxpayer's salesmen instructed the customers to ignore the original Trane invoice, and instead pay the second invoice showing the discount. The customers paid the Taxpayer, which in turn remitted the entire invoice amounts, including applicable tax, to Trane in Wisconsin. American Standard subsequently paid the Taxpayer a sales commission on the transactions.

(2) Warranties.

Customers sometimes requested extended warranties on the equipment not offered by Trane. In those cases, the Taxpayer agreed to provide the extended warranty. Again, the Taxpayer issued a second Trane invoice for the equipment and also the additional charge for the extended warranty. The second invoice included applicable sales tax on the entire invoice amount. The customer paid the Taxpayer, which in turn remitted to Trane the amount received for the equipment, i.e. the original Trane invoice amount, which included sales tax. The Taxpayer retained the amount paid for the extended warranty, and also received a sales commission from Trane.

(3) Additional non-Trane equipment.

Trane does not sell equipment that it does not manufacture. Consequently, if a customer needed equipment or a part not manufactured by Trane, the Taxpayer purchased it separately and resold it to the customer. The Taxpayer then issued a second Trane invoice to the customer for the Trane equipment and also the additional equipment. The customer paid the Taxpayer the second invoice amount. The Taxpayer in turn remitted to Trane the amount received for the Trane equipment, plus applicable tax. It retained the amount received for the non-Trane equipment, and, as with the category (2) and (3) transactions, also received a sales commission from Trane.

The Department audited the Taxpayer and assessed it on the amounts it received from the customers for the extended warranties and the non-Trane

equipment. The Taxpayer does not dispute and has paid the tax on those items.

The Department also assessed the Taxpayer on the gross receipts derived from the Trane equipment. The Taxpayer argues that it does not owe tax on the Trane equipment because it did not sell the equipment, and received payment from the customers only as agent for Trane. The Taxpayer contends that it remitted the gross receipts for the Trane equipment, plus applicable tax, to Trane, and that Trane, i.e. American Standard, subsequently reported and remitted the sales tax to the State. In support of that claim, the Taxpayer submitted the sworn deposition of a Trane employee in Wisconsin. The employee testified that American Standard reported and paid Alabama sales tax on the 16 invoices in issue.

The Department counters that the Taxpayer cannot be allowed a credit for any tax American Standard may have paid on the subject equipment because it cannot verify that American Standard reported and paid the tax.

ANALYSIS

Alabama sales tax is levied on every person or business making retail sales in Alabama. Code of Ala. 1975, ' 40-23-2(1). Trane sold the equipment in issue. The Taxpayer only acted as Trane's sales agent. Consequently, Trane, not the Taxpayer, is liable for Alabama sales tax on the equipment.

For the Department to prevail, the Taxpayer must have purchased the equipment at wholesale from Trane and then resold it at retail to the Alabama customers. That did not occur, either in form or substance. All invoices are Trane

invoices issued to the ultimate customers. As conceded by the Department, there are no invoices showing a sale by Trane to the Taxpayer. To the contrary, Trane will not sell equipment to the Taxpayer or any of its other sales agents or dealers. The Taxpayer never took possession of the equipment, and did not retain the proceeds from the sale of the equipment. It only received a sales commission for selling the equipment as agent for Trane.

The Department argues that the Taxpayer sold the Trane equipment in issue because it issued a second Trane invoice to the customers. However, the Taxpayer issued a second Trane invoice concerning the 16 transactions in issue only due to unusual circumstances.

Concerning the discounts, the Taxpayer issued a second invoice only because the customer needed an invoice showing the discount, and Trane refused to show a discount on its original invoice. After the customer paid the Taxpayer, the Taxpayer remitted the entire invoice amount to Trane.¹

Concerning the warranties, the customers required a single invoice for both the Trane equipment and the extended warranty provided by the Taxpayer. The Taxpayer retained the charge for the extended warranty, and forwarded the amount paid for the equipment, including sales tax, to Trane.

¹It is unclear why the customers paid the Taxpayer instead of Trane directly on the discounted invoices because the Taxpayer did not retain any of the proceeds.

As discussed, the Taxpayer subsequently paid the sales tax it collected on the extended warranties pursuant to the Department audit. Although extended warranties are not subject to sales tax in Alabama, see Dept. Reg. 810-6-1-.186.05, the Taxpayer correctly remitted the tax it collected on the extended warranties pursuant to Alabama's *Over collection* statute, Code of Ala. 1975, ' 40-23-26(d) (Any amount erroneously collected as sales tax from a customer must be remitted to the Department.).

Concerning the non-Trane materials, again the customers needed a single invoice for the total amount due. The Taxpayer kept the amount charged for the non-Trane equipment, and remitted the balance to Trane. The Taxpayer correctly paid sales tax pursuant to the Department audit on the non-Trane equipment it sold to the customers at retail. The Taxpayer may, however, file a joint petition for refund with its suppliers if it paid sales tax when it purchased the non-Trane materials, subject to the statute of limitations for applying for refunds at Code of Ala. 1975, ' 40-2A-7(c)(2)a.

In all three categories discussed above, Trane sold the equipment to the customers. The Taxpayer only received payment from the customers as Trane's agent in Alabama. All proceeds from the sales of the Trane equipment were forwarded to Trane in Wisconsin. It is black-letter law that a taxpayer must maintain adequate tax records. *State v. Ludlum*, 384 So.2d 1089 (Ala.Civ.App. 1980), cert. denied 384 So.2d 1094 (Ala. 1980). The Department is also authorized to review or audit a taxpayer's records to determine the taxpayer's correct liability. Code of

Ala. 1975, ' 40-2A-7(a)(2). However, Trane, i.e. American Standard, not the Taxpayer, made the sales in issue and is the entity liable for sales tax on those sales. If the Department suspects that American Standard has not reported and remitted the correct tax concerning the Trane equipment in issue, it should audit American Standard.

The final assessments are dismissed.²

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

Entered November 18, 2002.

²It is assumed that the Baldwin County use tax final assessment is based on the same transactions as the State sales tax final assessment. Because Trane presumably delivered the equipment to its customers in Baldwin County, the sales were closed in Baldwin County, and thus Baldwin County sales tax would have been due. It is unclear why the Department assessed Baldwin County use tax and not sales tax.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

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