

ALABAMA TAX TRIBUNAL

CHILDERSBURG COMMERCIAL DEVELOPMENT AUTHORITY,	§	
	§	
Taxpayer,	§	DOCKET NO. S. 18-620-JP
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER DISMISSING APPEAL

In May 2018, the Childersburg Commercial Development Authority submitted an “Application for Sales Tax Certificate of Exemption” to the Alabama Department of Revenue. On the application (Form EX-A1), the Authority claimed an exemption from sales tax pursuant to Ala. Code § 40-23-4(a)(11). That subsection exempts “[t]he gross proceeds of sales of tangible personal property to the State of Alabama, to the counties within the state and to incorporated municipalities of the State of Alabama.”

By letter dated June 6, 2018, the Revenue Department denied the Authority’s application. In so doing, the Revenue Department stated:

Section 40-23-4(a)(11), Code of Alabama 1975, exempts agencies of the State of Alabama, counties within the state, or any incorporated municipalities of the State of Alabama from sales and use tax. We have determined that your organization does not operate as an agency of the state, city, or county. Therefore, your application has been denied.

The Authority appealed to the Alabama Tax Tribunal and stated the following in its Notice of Appeal:

The Childersburg Commercial Development Authority (CCDA) was created by the Mayor and Council of the City of Childersburg at a regular meeting on December 6, 2016. Enclosed is a copy of the minutes of that meeting. Board members are appointed at the discretion of the Mayor and Council. The City

subsequently funded the CCDA with seed money. This money is being used to buy and renovate buildings in the Historic Downtown area of Childersburg. New businesses are recruited to purchase these buildings. We are currently renovating an old building and sales tax has become an issue. As an agency of the City, we should be exempt from paying sales tax. Alabama Code Section 40-9-14.1 exempts agencies of municipalities from sales tax.

A hearing on the Authority's appeal was conducted on December 6, 2018, and the Authority was represented by Mr. J. Montgomery Powell, Esq., and Mr. Morton Moody, CPA, who are the Authority's President and Secretary/Treasurer, respectively. During the hearing, there was a discussion concerning the fact that the Authority cited one code section in its application to the Revenue Department – § 40-23-4(a)(11) – but cited a different code section in its Notice of Appeal to the Tax Tribunal – § 40-9-14.1. Counsel for the Revenue Department, Ms. Mary Martin Mitchell, Esq., stated that it was not until the Authority filed its Notice of Appeal that the Revenue Department realized that the Authority was relying on § 40-9-14.1 to obtain an exemption certificate. Ms. Mitchell also pointed out that the form of application (Form EX-A1) submitted by the Authority to the Revenue Department was for a general or blanket exemption that would apply to the Authority on an ongoing basis, as opposed to an application (Form EXC-01) for an exemption concerning a specific, singular project under § 40-9-14.1.

Also during the hearing, the Authority informed the Tax Tribunal that a project undertaken by the Authority had just been completed, but that that project was not the subject of its exemption application. Instead, the Authority intended for its application to the Revenue Department to be an application for a blanket exemption (under § 40-23-4(a)(11)). However, the Authority also stated that, now, its sole reliance is on § 40-9-14.1.

In its post-hearing brief, the Authority conceded that it does not have a general,

statutory exemption from sales tax. It argues, however, that it qualifies for a limited exemption pursuant to § 40-9-14.1. The Authority's arguments in its brief match its statement during the hearing that its sole reliance for a tax exemption rests on § 40-9-14.1.

In the Revenue Department's brief, it argued, among other things, that the Authority's claim pursuant to § 40-9-14.1 is not properly before the Tax Tribunal because the Authority never submitted an application to the Department pursuant to that section.

The Revenue Department succinctly stated its position as follows:

In its Notice of Appeal dated June 26, 2018, CCDA for the first time cited § 40-9-14.1(a) as a basis for granting it an exemption from sales tax. Exhibit 3. Section 40-9-14.1 provides for a Certificate of Exemption for Government Entity Project to be issued to an exempt governmental entity and its contractor for a specific project so long as the project meets certain specifications. Because a certificate issued pursuant to § 40-9-14.1 is a limited certificate for a definite project, the Department created a specific application for such a certificate and requests the project specific documentation to determine compliance with § 40-9-14.1 before issuing such a certificate. See Exhibit 4

It is undisputed that CCDA did not submit a Governmental Entity Exemption Certificate Project to the Department seeking a certificate for a specific project pursuant to § 40-9-14.1. Additionally, the Department has never received any information regarding a contract for a specific project CCDA seeks an exemption for and thus, its May 4, 2018 application cannot be construed as a request for a Certificate of Exemption for Government Entity Project pursuant to § 40-9-14.1. Because CCDA has neither requested a Governmental Entity Exemption Certificate Project nor submitted documentation regarding any project, the Department has never even had the opportunity to review any such application to see whether it would qualify pursuant to the statute. Therefore, the Department contends that any inquiry into whether CCDA should in the future based on some future project be issued a certificate pursuant to § 40-9-14.1 is premature. More specifically, there has been no Department action denying CCDA's application for a Governmental Entity Exemption Certificate Project from which an appeal may lie. See 40-2B-2(a), *Ala. Code* 1975.

The Revenue Department is correct. (The Authority did not file a reply brief.)

Section 40-2A-8(a) provides that "[a]ny taxpayer aggrieved by any . . . refusal to act

concerning the denial or revocation of a license, permit, or certificate of title by the department shall be entitled to file a notice of appeal **from such . . . refusal to act** with the Alabama Tax Tribunal.” (emphasis added) Also, “the state shall provide an independent agency with tax expertise [the Alabama Tax Tribunal] to resolve disputes between the Department of Revenue and taxpayers, prior to requiring the payment of the amounts in issue or the posting of a bond, **but after the taxpayer has had a full opportunity to attempt settlement with the Department of Revenue. . .**” § 40-2B-2(a) (emphasis added). And an appeal to the Tax Tribunal “shall be commenced by the filing of a notice of appeal **protesting a tax determination made by the Department of Revenue**, including any determination that . . . denies an application for a license, permit, or registration.” *Id.* (emphasis added)

Here, the Revenue Department’s “refusal to act” or “tax determination” was the denial of the Authority’s request for a general or blanket exemption pursuant to § 40-23-4(a)(11). As pointed out by Ms. Mitchell, the Revenue Department did not deny a request by the Authority for a specific-project exemption pursuant to § 40-9-14.1, because the Revenue Department never was presented with such a request. And, as stated, the Authority has conceded that it is not entitled to an exemption certificate pursuant to § 40-23-4(a)(11), despite citing that sole section to the Revenue Department as authority for its request.

Thus, the Authority’s claim for a specific-project exemption certificate pursuant to § 40-9-14.1 is not properly before the Tax Tribunal. The Revenue Department has made no determination on such a claim and, in fact, there is no evidence of such a project being in

existence at this time. For the Tax Tribunal to rule on the Authority's claim under § 40-9-14.1 would amount to the issuance of an advisory opinion, which the Tax Tribunal is not authorized to give. Therefore, the Authority's appeal is dismissed for lack of subject-matter jurisdiction.¹

It is so ordered.

This Final Order Dismissing Appeal may be appealed to circuit court within 30 days, pursuant to Ala. Code § 40-2B-2(m).

Entered May 7, 2019.

/s/ Jeff Patterson

JEFF PATTERSON

Chief Judge

Alabama Tax Tribunal

jp:dr

cc: Morton W. Moody, CPA
Mary Martin Mitchell, Esq.

¹ If the Authority presents an application to the Revenue Department under § 40-9-14.1 for a specific project, the Authority would have the benefit of fully developing its legal arguments concerning that section and presenting those arguments to the Revenue Department. The Department then would have the opportunity to consider the factual and legal issues arising from the application and either grant the application or present clear reasons for denial which then could be presented to the Tax Tribunal on appeal.