

CHEROKEE RIVER INDIAN
COMMUNITY
1050 County Road 67, Dept. 10
Moulton, AL 35650,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 03-1089

FINAL ORDER

The Cherokee River Indian Community (“Community”) petitioned the Department for a sales tax exemption certificate. The Department denied the exemption. The Community appealed to the Administrative Law Division pursuant to Code of Ala. 1975. §40-2A-8(a). A hearing was conducted on June 14, 2004. Steven Bison represented the Community. Assistant Counsel Wade Hope represented the Department.

The Community is an unincorporated group of 63 Native American Indians located in Moulton, Alabama. The Community performs various charitable and civic services in the Moulton area, and is recognized as a non-profit organization pursuant to 26 U.S.C. §501(c)(3).

The Community filed a petition with the U.S. Bureau of Indian Affairs in approximately 2000 to be federally acknowledged as a sovereign Indian nation. The Bureau has not to date recognized the Community as an Indian tribe or nation.

The Community’s position is set out in a Statement of Cause, which is attached to and made a part of this Final Order. In substance, the Community claims it is exempt from Alabama tax because it is a sovereign Indian tribe or nation that is exempt from or otherwise not subject to any state’s taxing jurisdiction. It also claims that it performs many

of the same charitable and/or civic services that are performed by various other entities that are specifically exempted from sales and use tax by Alabama law.

The Department concedes that if the Community was a federally recognized Indian tribe on a reservation, it would be exempt from sales tax on property delivered to the reservation. The Poarch Creek Indians in Atmore, Alabama have such an exemption. The Department argues, however, that because the Community is not a federally recognized Indian tribe, and also because the Community is not otherwise statutorily exempt from sales and use tax by an Act of the Alabama Legislature, it is not exempt from Alabama sales or use tax. See, Reg. 810-6-3-.07.05 for a detailed list of entities that are statutorily exempt from Alabama sales and/or use tax.

The burden is on any taxpayer, including the Community in this case, to prove that it is exempt from Alabama tax. *Crim v. Phipps*, 601 So.2d 474 (Ala. 1992). The Community is not a federally recognized sovereign Indian tribe that the State is prohibited from taxing. It also has not been exempted from sales or use tax by a specific Act of the Alabama Legislature. Consequently, while the Community performs many commendable public and charitable services, it is not exempt from Alabama sales and use tax. The Department's denial of the Community's exemption certificate is affirmed.

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

Entered June 16, 2004.

BILL THOMPSON
Chief Administrative Law Judge