

ALABAMA TAX TRIBUNAL

BLACK ELECTRICAL CONTRACTORS,
INC., §
Taxpayer, § DOCKET NO. INC. 20-753-JP
v. §
STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

OPINION AND FINAL ORDER

This appeal involves the denial by the Alabama Department of Revenue of a request for a sales and use tax certificate of exemption relating to a government-entity project. The Taxpayer filed an Application for Sales and Use Tax Certificate of Exemption with the Revenue Department to request an exemption from sales taxes totaling \$8,500 relating to the Taxpayer’s work as a subcontractor on a project apparently associated with the University of Alabama. The application was undated, but it was stamped as received by the Revenue Department on August 17, 2020. The application listed the completion date of the project as July 10, 2020.

In its Answer, the Revenue Department stated that its denial of the application was proper because all building supplies that could have been purchased tax free already had been purchased (with tax paid) and installed by the time the application was submitted by the Taxpayer. A Second Preliminary Order was entered on July 9, 2021, directing the Taxpayer to notify the Tax Tribunal no later than August 31, 2021, if it still contended that the Revenue Department’s denial of the certificate was incorrect. The Taxpayer did not respond.

Generally, Ala. Code § 40-9-14.1 provides an exemption from state and local sales and use taxes for certain purchases that are part of a government-entity project. The statute provides that the Revenue Department “shall issue a certificate of exemption to the governmental entity for each tax exempt project.” Ala. Code § 40-9-14.1(b)(1). Further, the statute provides that the Department “shall grant a certificate of exemption from state and local sales and use taxes to any contractor licensed by the State Licensing Board for General Contractors, or any subcontractor working under the same contract ... for the construction of a building or other project for and on behalf of a governmental entity which is exempt from the payment of sales and use taxes.” Ala. Code § 40-9-14.1(b)(2).

Here, the Taxpayer is an electrical subcontractor who performed work on a project identified as “Kappa Delta Kitchen Improvements” (“the project”). As stated, the Revenue Department received the Taxpayer’s application for the project on August 17, 2020. The application indicated that the project start date was May 5, 2020, and that the project completion date was July 10, 2020. The Revenue Department denied the Taxpayer’s application because the project was completed before the exemption was requested.

In support of its denial of the application, the Revenue Department noted that the instructions to the application unambiguously state that “...[a]ny purchases made prior the issuance of a certificate will not be exempt.” However, this exact language is not found in Ala. Code § 40-9-14.1, or Ala. Admin. Code r. 810-6-3-.77, which is the administrative rule promulgated by the Revenue Department to implement the

statute. Thus, the issue before the Tax Tribunal is whether Alabama law, specifically Ala. Code § 40-9-14.1, requires an exemption certificate to be issued before purchases are made for a government-entity project, in order for the purchases to be exempt from state and local sales and use taxes. For the reasons set forth below, the Tax Tribunal finds that Ala. Code § 40-9-14.1 does require an exemption certificate to be issued before purchases are made for a government-entity project, in order for the purchases to be exempt from state and local sales and use taxes.

First, Ala. Code § 40-9-14.1(b)(2) states that “[t]he Department of Revenue shall grant a certificate of exemption from state and local sales and use taxes ... **for the purchase** of building materials, construction materials and supplies, and other tangible personal property **that becomes** part of the structure ...” (emphasis added) Thus, a certificate of exemption issued by the Revenue Department would be used to purchase items that **become** part of a government project. The statute does not provide for a certificate of exemption for items which **were purchased** and **became** part of a completed project.

Second, Ala. Code § 40-9-14.1(c) provides:

The **use of a certificate of exemption for the purchase** of tangible personal property pursuant to this section shall include only tangible personal property **that becomes** part of the structure that is the subject of the construction contract. Any contractor or subcontractor **purchasing any tangible personal property pursuant to a certificate of exemption** shall maintain an accurate cost accounting of the purchase and use of the property in the construction of the project. (emphasis added)

The first sentence of § 14.1(c) requires that a certificate of exemption be used to make tax-exempt purchases of items which become part of the eligible government

project. Likewise, the second sentence of the subsection requires that tax-exempt purchases be made pursuant to a certificate of exemption. Obviously, such a certificate already must be in existence for such purchases to be made tax-free.

Also, Ala. Code § 40-9-14.1(d) provides:

A contractor who **has an exemption** from sales and use tax **for the purchase** of materials to use on a government project shall file, in a manner as prescribed by the department, reports of all exempt purchases. The reports shall be filed as a **prerequisite to renewal** of a certificate of exemption. (emphasis added)

Again, the statute requires the preexistence of a certificate of exemption to make tax-exempt purchases. And § 14.1(d) requires a contractor who holds a certificate of exemption to satisfy certain reporting requirements “as a prerequisite to renewal of a certificate of exemption.” If the statute allowed for a certificate of exemption to be issued after a project’s completion date, there would be no need for a renewal of the certificate and no need for the recordkeeping requirement as a prerequisite to renewal.

Finally, Ala. Code § 40-9-14.1(f) authorizes the Revenue Department to “adopt rules to implement this section in order to effectuate the purposes of this section and to provide for accurate accounting and enforcement of this section.” The Revenue Department has done so in Ala. Admin. Code r. 810-6-3-.77. Subparagraph (4) of that rule states that a certificate of exemption “shall be used by the certificate holder to claim the exemption when making qualifying tax-exempt purchases for the project listed on the certificate.”

Here, the Taxpayer, a subcontractor on the project, stated in its Notice of Appeal that it “did not receive the tax information from the contractor until August 17, 2020.

Therefore, we submitted the request on that date.” However, based on the statute and the administrative rule, the denial by the Alabama Department of Revenue of the Taxpayer’s request for a sales and use tax certificate of exemption relating to a government-entity project is upheld, because the purchases in question were made prior to the issuance of the exemption certificate. Judgment is entered accordingly.

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

Entered July 22, 2022.

/s/ Jeff Patterson

JEFF PATTERSON

Chief Judge

Alabama Tax Tribunal

jp:maj

cc: Brent Keith
Morgan B. Beckman, Esq.