

**ALABAMA TAX TRIBUNAL**

SUNCREST SALES CORPORATION, §  
Taxpayer, § DOCKET NO. S. 19-959-JP  
v. §  
STATE OF ALABAMA §  
DEPARTMENT OF REVENUE

**OPINION AND FINAL ORDER**

Suncrest Sales Corporation (the Taxpayer) acquires land for the purpose of establishing manufactured-home communities. Parcels of land are leased by the Taxpayer’s sister company to tenants who desire to locate a manufactured home on their parcel. The Taxpayer also serves as a retailer of manufactured homes that the Taxpayer has acquired at wholesale. And the Taxpayer facilitates the sales of manufactured homes in the secondary market, such as when a homeowner decides to move without taking their home with them. In those situations, the Taxpayer assists in the transfer of title, in processing necessary paperwork, and in collecting sales tax on the transactions. In the course of its business, the Taxpayer purchases significant amounts of building supplies such as lumber and concrete for use in the building of decks, carports, garages, driveways, and patios as additional features of the manufactured homes that the Taxpayer sells.

Question Presented

Alabama’s legislature has defined a “retail sale” to include “[s]ales of building materials to contractors, builders, or landowners for resale or use in the form of real

estate ... in whatever quantity sold.” Here, when the Taxpayer purchased building supplies, it did so without paying sales tax by using its retail sales tax license to purchase the supplies at wholesale. The Taxpayer later collected sales tax on its sales of the homes, including any additions, and remitted the sales tax on the total sales amounts. The question presented is whether the building materials purchased by the Taxpayer were used in the form of real estate.

### Facts

Mr. Scott Heiler testified that he is the owner and president of the Taxpayer (Suncrest Sales Corporation) and that he also owns Foley Grove, LLC. The Taxpayer apparently acquired the property known as The Grove, although this fact is not completely clear from the record because it is Foley Grove, LLC, which leases parcels of land within The Grove to tenants who desire to place a manufactured home on their parcel.

Nevertheless, in addition to selling manufactured homes to tenants, the Taxpayer also provided additions such as steps, carports, skirting, sunrooms, sheds, garages, driveways, and parking pads. When the closing of a sale occurred, the Taxpayer collected and remitted sales tax at the reduced automotive rate on the total price of the home and the additions. The Taxpayer did not pay sales tax on its purchases of building supplies that it used in constructing the additions. Instead, it used its reseller’s certificate to buy the supplies tax free from vendors such as home improvement stores. The work was then performed by subcontractors.

Mr. Heiler testified that the lease agreements and community regulations

required homeowners who sold their homes to demolish all additions so that the site is restored to its original condition, unless the purchaser agreed to accept title to the additions. However, he also testified that a demolition of additions had never yet happened in The Grove.

On audit, the Revenue Department took the position that the Taxpayer should have paid sales tax on its purchases of building supplies, pursuant to Ala. Code § 40-23-1(a)(10). After determining the Taxpayer's total purchases during the audit period, the Revenue Department entered a final assessment of state sales tax and interest in the amount of \$13,501.87, for the periods of June 2015 through May 2018. Because the Revenue Department also administered taxes for the City of Foley at that time, the Revenue Department entered a final assessment of local sales tax at the city's police jurisdiction rate. The assessment totaled \$22,817.09, including tax, interest, and a late-filing penalty, for the periods of April 2014 through May 2018. (During the hearing, the Taxpayer stipulated to being in Foley's police jurisdiction during the audit period.)

The Revenue Department's auditor, Thomas Hogg, testified that items such as skirting, blocks, and foundation materials that are customarily used in setting up a manufactured home, along with the home itself, were properly taxed by the Taxpayer at the 2 percent automotive rate, pursuant to Ala. Code § 40-23-2(4). However, Mr. Hogg treated the purchases by the Taxpayer of materials used to construct the additions as retail sales subject to the regular rate, pursuant to Ala. Code § 40-23-1(a)(10). The final assessments resulted from the Taxpayer's untaxed purchases of

these materials. Mr. Hogg photographed some of the additions that had been constructed throughout The Grove, such as a garage, a covered walkway, a concrete driving pad, a concrete driveway, a covered carport, a shed, a sunroom, and a covered porch. Those photographs were admitted into evidence.

In calculating the amount of state sales tax claimed due, the Revenue Department credited the Taxpayer with the amount of sales tax that it had remitted. Also, the Taxpayer does not dispute the Revenue Department's calculation of the purchases that the Taxpayer made from vendors during the audit period. Instead, the Taxpayer disputes the Revenue Department's claim that tax should have been paid by the Taxpayer on those purchases. The Taxpayer also disputes the extension of the final assessment period for local tax from April 2014 through May 2015, and it objects to the imposition of a penalty on the local-tax assessment.

#### Law and Analysis

Alabama's sales tax is levied upon those who are engaged in the business of selling tangible personal property at retail. *See* Ala. Code § 40-23-2(1). The legislature has defined the phrase "sale at retail or retail sale" to include the following:

All sales of tangible personal property except those above defined as wholesale sales. The quantities of goods sold or prices at which sold are immaterial in determining whether or not a sale is at retail. Sales of building materials to contractors, builders, or landowners for resale or use in the form of real estate are retail sales in whatever quantity sold. Sales of building materials, fixtures, or other equipment to a manufacturer or builder of modular buildings for use in manufacturing, building, or equipping a modular building ultimately becoming a part of real estate situated in the State of Alabama are retail sales, and the use, sale, or resale of building shall not be subject to the tax.

...

Ala. Code § 40-23-1(a)(10).

By administrative rule, the Revenue Department has addressed the taxation of building materials as follows:

(1) The courts of this state and other states have generally held that contractors and builders do not sell the building materials they use and that sales to them are taxable under sales and use tax laws. ...

(2) Building materials when purchased by builders, contractors or landowners for use in adding to, repairing, or altering real property are subject to either the sales or use tax at the time of purchase by such builder, contractor, or landowner. Building materials as used in the sales or use tax laws includes any material used in making repairs, alterations, or additions to real property. "Builders", "contractors", and "landowners", mean and include any person, firm, association, or corporation making repairs, alterations or additions to real property. The term "building materials" includes such tangible personal property as lumber, timber, nails, screws, bolts, structural steel, reinforcing steel, cement, lime, sand, gravel, slag, stone, telephone poles, fencing, wire, electric cable, brick, tile, glass, plumbing supplies, plumbing fixtures, pipe, pipe fittings, electrical fixtures, built-in cabinets, sheet metal, paint, roofing materials, road building materials, sprinkler systems, air conditioning systems, built-in fans, heating systems, flooring, floor furnaces, crane ways, crossties, railroad rails, railroad track accessories, tanks, builders hardware, doors, door frames, windows, window frames, water meters, gas meters, well pumps and any and all other tangible personal property which becomes a part of real property.

Ala. Admin. Code r. 810-6-1-.27

Also, by rule, the Revenue Department has defined the phrase "building materials" as follows:

(1) The term "building materials", as used in the Alabama sales and use tax laws, means all tangible personal property, including any device or appliance used by builders, contractors, or landowners in making improvements, additions, alterations or repair to real property in such a way that such tangible personal property becomes identified with

a part of realty.

(2) A device or appliance becomes a fixture and a part of the real property to which it is connected when it is built into or is attached to a structure in such a way that its removal would substantially damage or deface such structure.

...

Ala. Admin. Code r. 810-6-1-.28

The facts in this case show that the building materials sold by vendors to the Taxpayer were used by the Taxpayer in the form of real estate. As such, those sales qualified as retail sales subject to sales tax.

The Taxpayer purchased materials for the construction of sunrooms, decks, covered porches, carports, garages, concrete driveways, and such. It then hired workers to construct the additions using those building materials. Mr. Heiler was asked on cross-examination if the workers were employees of the Taxpayer or contractors hired to do the work under the Taxpayer's specifications. Mr. Heiler testified that "they're contractors because, as the rules state, they have to be a licensed contractor ... so we can construct something that requires a building permit." Thus, the Taxpayer was operating as the contractor in these situations, with the workers being subcontractors. *See, e.g., State Dep't of Revenue v. Montgomery Woodworks, Inc.*, 389 So. 2d 510, 511-12 (Ala. Civ. App. 1980), stating that a contractor is "(1) one who formally undertakes to do anything for another; (2) one who contracts to furnish a product or service to another; or (3) one who undertakes to supply labor and materials for specific improvements under a contract with an owner or principal. *Department of*

*Revenue v. James A. Head & Co., supra.*” The Taxpayer here fits within the court’s definition. And if the Taxpayer owns the land on which the additions are being built, the Taxpayer obviously would be a “landowner” within §40-23-1(a)(10). Also, the materials purchased by the Taxpayer met the regulatory definition of “building materials” because the materials were used to make additions to real property; *i.e.*, the land.

The Taxpayer primarily argues that the additions were temporary because the lease agreements required homeowners to remove the additions if a purchaser of the home was unwilling to take title to the additions. However, Mr. Heiler testified that no removal of additions had occurred in The Grove. Further, as noted by the Revenue Department, the additions are cemented into the ground. Therefore, removal of the additions likely would cause damage to them. And, concerning driveways, walkways, and parking pads, removal would require the destruction of the additions.

The Taxpayer also argues that Attorney General Opinion 80-00141 supports its position that its additions are temporary in nature. First, the opinion did not specify the types of improvements that could have been removed from tenant lots. Second, as stated recently by our state Supreme Court, “an attorney general’s opinion is only advisory; it is not binding on this Court and does not have the effect of law.” *Health Care Authority for Baptist Health v. Central Alabama Radiation Oncology, LLC*, 292 So. 3d 623, 635 (Ala. 2019), quoting *Farmer v. Hypo Holdings, Inc.*, 675 So. 2d 387, 390 (Ala. 1996).

The Taxpayer objects to the local sales tax final assessment having been entered

for periods prior to those that are included in the state sales tax assessment. However, Ala. Code § 40-2A-7(b)(2)a allows for a preliminary assessment (which is the precursor to a final assessment) to be “entered at any time if no return is filed as required ...” Here, the Taxpayer had not filed any returns with the City of Foley, so the Revenue Department was allowed by law to extend the assessment period. Further, the Taxpayer has not shown that reasonable cause exists for a waiver of the penalty in that assessment. *See* Ala. Code § 40-2A-11(h).

#### Conclusion

For these reasons, the final assessments at issue are upheld. Judgment is entered against the Taxpayer and in favor of the Revenue Department in the amounts of \$13,501.87 concerning the state sales tax final assessment and \$22,817.09 concerning the local sales tax final assessment, plus additional interest that continues to accrue on each assessment until each liability is paid in full.

It is so ordered.

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

Entered August 8, 2022.

*/s/ Jeff Patterson*

JEFF PATTERSON

Chief Judge

Alabama Tax Tribunal

jp:maj

cc: T. Deven Moore, Esq.  
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