BOYD BROTHERS TRANSP., INC. 3275 Highway 30 Clayton, AL 36016-3003,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
Taxpayer,	§	DOCKET NO. S. 04-203
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER DENYING TAXPAYER'S APPLICATION FOR REHEARING

This case involves final assessments of State and City of Clayton use tax entered against Boyd Brothers Transportation, Inc. ("Taxpayer") for October 1997 through March 2003. A Final Order was entered on December 17, 2004 affirming the State assessment and dismissing the City of Clayton assessment. The Taxpayer timely applied for a rehearing. A hearing on the Taxpayer's application was conducted on February 15, 2005. Jim Sizemore represented the Taxpayer. Assistant Counsel Margaret McNeill represented the Department.

As explained in more detail in the December 17, 2004 Final Order, the Taxpayer operates an interstate motor freight carrier business throughout the United States. It is headquartered in Clayton, Alabama, and has five service centers, two of which are located in Alabama. The Taxpayer purchased numerous truck tractors and trailers at retail outside of Alabama. The tractors and trailers were first used outside of Alabama, but were all subsequently used in Alabama during the subject period. The issue is whether the Taxpayer is liable for Alabama use tax on its use of the tractors and trailers in Alabama.

Code of Ala. 1975, §40-23-61(c) levies a 2 percent use tax on all motor vehicles purchased at retail for use, storage, or consumption in Alabama. The December 17 Final

Order held that the Taxpayer's tractors and trailers had been purchased at retail for use in Alabama, and were subsequently used in Alabama, in which case the Alabama use tax applied.

The Taxpayer argues on rehearing that the tractors and trailers were not purchased for use in Alabama within the purview of the use tax statute. The Taxpayer claims it had no specific intent to use the tractors and trailers in Alabama, but only had a general intent to use the tractors and trailers in interstate commerce, which might or might not eventually bring the tractors and trailers into Alabama. The Taxpayer cites Dept. Reg. 810-6-5-.25 in support of its case.

Section 40-23-61(c) does require that for the use tax to apply, the subject motor vehicle must be purchased at retail for use in Alabama. However, the statute does not require that the property must be first used in Alabama, nor does it require that the property must be purchased for exclusive use in Alabama. This issue was adequately explained in the Final Order, as follows:

> The Taxpayer also argues that the §40-23-61(c) use tax does not apply because the tractors and trailers were not purchased for use in Alabama, citing Reg. 810-6-5-.25(1). Section 40-23-61(c) does require that the subject property must be purchased for use in Alabama. But as in *McClendon*, the tractors and trailers in issue were purchased for use in Alabama. The fact that the Taxpayer also intended to use the tractors and trailers in other states does not remove or exclude the use of the vehicles in Alabama from the scope of the §40-23-61(c) use tax.
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> It is also irrelevant that the tractors and trailers may have been used in other States before entering Alabama. Section 40-23-61(c) only requires that the subject property must be (1) purchased at retail for use in Alabama, and (2) subsequently used, stored, or consumed in Alabama. It is not required that the property must be first used in Alabama, or put into use in Alabama immediately or within a certain period. As the Bankruptcy Court stated in *Culverhouse* – ". . . the use tax under §40-23-61(c), does not limit its application to a 'first use' in the State of Alabama. Therefore, . . . where, as

> here no out-of-state sales tax is paid, the subsequent use of the motor vehicles in the State of Alabama properly triggers the imposition of the Alabama use tax." *Culverhouse* at 9.

Boyd Brothers Transp., Inc. v. State of Alabama, S. 04-203 (Admin. Law Div. 12/17/04) at 10 – 11.

The Taxpayer is in substance arguing that when it purchased the tractors and trailers it did not intend to use them in Alabama. However, the Taxpayer is headquartered in Alabama and two of its five terminals are in Alabama. It purchased the tractors and trailers with the intent of using them in all of the states in which it operated its long-haul trucking business, which includes Alabama. The facts thus establish that the Taxpayer purchased the tractors and trailers with the intent of using them in Alabama. It is also undisputed that the Taxpayer used all of the tractors and trailers in Alabama.

The Taxpayer argues that Dept. Reg. 810-6-5-.25 provides a "safe harbor." However, the regulation applies only to property purchased "for use outside of Alabama." It does not apply to property purchased for use both outside of and in Alabama, as were the tractors and trailers in issue. Consequently, the regulation is inapplicable. In any case, the Revenue Department cannot by regulation limit the scope or intended application of a statute enacted by the Alabama Legislature. *Adair v. Alabama Real Estate Comm'n*, 303 So.2d 119 (Ala. Civ. App. 1974).

A primary purpose of the Alabama use tax is to prevent a taxpayer from avoiding Alabama sales tax by purchasing goods outside of Alabama that are intended for use in Alabama. *Ex parte Fleming Foods of Alabama, Inc.*, 648 So.2d 577 (Ala. 1994), on remand 648 So.2d 580 cert. denied, 115 S. Ct. 1690. The primary purpose of the use tax will thus be defeated if the Taxpayer, which is headquartered and has terminals in Alabama, is not

required to pay the use tax due on the tractors and trailers in issue.

The December 17, 2004 Final Order is affirmed.

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

Entered April 18, 2005.

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BILL THOMPSON
Chief Administrative Law Judge