

SOUTH CENTRAL ALABAMA  
DEVELOPMENT COMMISSION  
5900 Carmichael Place  
Montgomery, AL 36117,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. MV. 04-536

### FINAL ORDER

South Central Alabama Development Commission (“Petitioner”) applied for a county government license plate for a 2005 Dodge Caravan. The Department denied the application. The Petitioner appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-8(a). A hearing was conducted on September 23, 2004. Tyson Howard represented the Petitioner. Assistant Counsel John Breckenridge represented the Department.

On June 2, 2004, the Petitioner applied for a county license plate for a 2005 Dodge Caravan. The Department denied the application because it did not consider the Petitioner to be an agency or subdivision of its member counties, or a public utility. The Petitioner appealed.

Code of Ala. 1975, §40-12-250 provides that “motor vehicles owned and used by the state, or a county, or municipality of this state shall not be subject” to the motor vehicle license taxes levied at Code of Ala. 1975, §40-12-240, et seq. The Petitioner argues that it is exempt from paying motor vehicle license taxes, and thus entitled to a county tag, because it is an agency or subdivision of its member counties. The Department counters, however, that the Petitioner “has been unable to provide any documentation that (it) is

considered a subdivision of a county or a Public Utility. Because the vehicle is not owned and used by a county or public utility, it is the position of the Department that a county or PUD license plate should not be issued for the subject motor vehicle.” Department’s Answer at 2, 3.

The Petitioner was created by Act 1126 of the Alabama Legislature in 1969. The Petitioner is funded by the State and its member counties. Its primary function is to promote and implement economic development and job creation in its member counties, which are Lowndes, Montgomery, Macon, Bullock, Pike, Crenshaw, and Butler.

The Department has since at least 1977 recognized development commissions created by Act 1126 in 1969 as agencies of its member counties, and thus exempt from State sales and use tax. An October 12, 1977 letter from Revenue Examiner James Smith, State Ex. 4, states in part – “Since your organization is considered to be an extension of county and municipal governments, your purchases will not be subject to Alabama sales tax.”

The Alabama Attorney General’s Office has also issued at least three Attorney General Opinions recognizing that a development commission is an agency or subdivision of its member counties. In an August 8, 1974 Opinion issued to Robert McGukin, Chairman of the North Central Regional Council of Governments, the Attorney General opined, as follows:

Your first question asks whether the North Central Alabama Regional Council of Governments and other regional planning and development commissions, as designated by the Governor under the provisions of Act No. 1126, Acts of Alabama 1969, Regular Session, page 2084, are exempt from sales and use tax . . . Your question is answered in the affirmative.

The various regional planning and development commissions do not pay ad valorem tax as they are treated by the State Department of Revenue as county or municipal agencies within the purview of Section 91 of the Constitution.

*State ex rel Richardson v. Morrow*, 276 Ala. 385, 162 So.2d 480, related to the question of whether the City Water Works and Gas Board of the City of Cordova was an agency of the city. It was treated the same as its creating agency and the court held that where it was performing a governmental function by agency, the agency is treated the same as a municipality. It is quite clear from Act No. 1126, supra, that the Governor has designated, certified and indeed created the planning and development districts and by so doing has actually created public agencies to perform a governmental function.

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In an opinion of the Attorney General, dated January 19, 1972, to Honorable William E. Batson, Chairman, Muscle Shoals Council of Local Governments, it was held that regional planning and development commissions are agencies created by municipalities and counties as public corporations to perform a public function and as such were agencies of the counties and municipalities creating them. The opinion held that regional planning and development commissions were extensions of county government . . .

A regional planning and development commission as certified and designated by the Governor under the provisions of Act No. 1126, supra, is purely governmental and public in its nature and function. . . . It is my opinion that these commissions are clearly state planning and development districts and because of their composition of county and municipal governments must be considered as political subdivisions of the State of Alabama. It is my conclusion that all of the regional planning and development commissions should be treated as counties and municipalities in their exemption from sales and use taxes since such commissions are mere extensions of the aforementioned governmental units for the purposes of state planning and development.

The Attorney General reiterated his position that development commissions were agencies of its member counties in a February 12, 1975 Opinion requested by Revenue Commissioner Charles Boswell.

Will you please give me your official opinion as to whether the Regional

Planning Commissions . . . are exempt or immune, as governmental agencies or instrumentalities, from paying state sales and license taxes, including motor vehicle licenses as to motor vehicles owned and operated by said commissions.

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Regional planning and development commissions are governmental agencies designated by the Governor under the provisions of Act No. 1126, Acts of Alabama 1969, Regular Session, page 2084. These commissions are composed of counties and municipalities, perform strictly governmental functions, and are funded entirely by governmental entities. Also, regional planning and development commissions are governed by boards composed entirely of county and city officials and as such are mere extensions of the counties and cities which comprise the particular planning and development region.

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I see no conflict between this case (*Town of Mackleburg v. Northwest Alabama Gas District*, 170 So.2d 792) and the conclusions reached by opinions of this office that sales of tangible personal property to regional planning and development commissions are exempt from sales and use tax. I base this on the fact that regional planning and development commissions are governmental agencies performing a governmental rather than a proprietary function and are extensions of their county and municipal members.

The Attorney General's Office again reiterated its position in a May 26, 2000 Opinion requested by the East Alabama Planning and Development Commission.

In an Opinion to Honorable Robert E. McGukin, Chairman, North Central Alabama Regional Council of Governments, dated August 8, 1974, A.G. File No. 140, this Office opined that regional planning and development commissions created pursuant to Act No. 1126 "should be treated as counties and municipalities in their exemption from sales and use taxes since such commissions are mere extensions of the aforementioned governmental units for the purposes of state planning and development." *Id.* at 4. We also noted that, at that time "regional planning and development commissions d[id] not pay ad valorem tax as they [we]re treated by the State Department of Revenue as county or municipal agencies within the purview of Section 91 of the Constitution." *Id.* at 2. We reaffirmed our conclusion that regional planning and development agencies were "extensions of their county and municipal members" and thus exempt from sales and use tax in an Opinion

to Honorable Charles A. Boswell, Commissioner, State Department of Revenue, dated February 12, 1975.

In accordance with our 1974 opinion to Mr. McGukin and our 1975 Opinion to Commissioner Boswell, we conclude that a regional planning and development commission should be treated as an extension of the counties and municipalities which are members of it for the purposes of ad valorem taxation, as well as sales and use taxation.

The Department concedes that the Petitioner is exempt from State sales, use, and ad valorem tax as an agency or subdivision of its member counties. It nonetheless maintains that the Petitioner still does not qualify as an agency or subdivision of the counties for purposes of the motor vehicle tax exclusion at §40-12-250. I disagree.

If the Petitioner is an agency or subdivision of its member counties for sales, use, and ad valorem tax purposes, which it is, it is likewise an agency or subdivision of the county for motor vehicle license purposes. The Petitioner, as an agency or subdivision of its seven member counties, is entitled to the same tax exemptions and exclusions allowed to counties, including the motor vehicle license exclusion at §40-12-250. Consequently, the Petitioner is not subject to the motor vehicle license taxes levied at §40-12-240, et seq., and is entitled to carry county designated license plates on its vehicles.

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

Entered September 29, 2004.

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BILL THOMPSON  
Chief Administrative Law Judge