

SERA-TEC BIOLOGICALS
223 North Center Drive
North Brunswick, NJ 08902,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 00-400

OPINION AND PRELIMINARY ORDER

Sera-Tech Biologicals (ATaxpayer@) applied to the Revenue Department for a sales tax exemption certificate. The Department denied the application. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, ' 40-2A-8(a). A hearing was conducted on September 26, 2000. The Taxpayer was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Wade Hope represented the Department.

The issue in this case is whether the Taxpayer is entitled to an Alabama sales tax exemption certificate.

No sworn testimony or other evidence was submitted at the September 26 hearing. However, based on the Taxpayer-s appeal letter and statements by the Department-s attorney at the hearing, the agreed facts are as follows:

The Taxpayer operates a plasma collection business in Alabama. Plasma is the liquid part of human blood. The Taxpayer obtains blood from donors, and then separates the plasma from the blood through a procedure known as plasmapheresis. The Taxpayer sells the processed plasma to biological manufacturers and pharmaceutical companies outside of Alabama. Those customers further process the plasma into various medicines.

The Taxpayer claims it is tax-exempt based on the following assertions in its notice of appeal:

Sera-Tec Biologicals makes only wholesale sales and does not sell directly to any customers in Alabama. Products purchased from our suppliers become the containers for our plasma (bottles and bags) and are therefore resold. Chemicals purchased (anti-coagulants) are actually mixed with red blood cells and returned to the donor. Other items (plasmacell sets, bowls, harnesses) are attached to our manufacturing machines in order to obtain the plasma from donors.

The issue of whether a business that collects and sells plasma is entitled to an Alabama exemption certificate was recently addressed in *Alabama Plasma, Inc. v. State of Alabama*, S. 99-329 (Admin. Law Div. 10/13/00). Assuming the facts in this case are substantially the same as the facts in *Alabama Plasma*, that case controls.

In *Alabama Plasma*, as in this case, the Department argued that the taxpayer was not selling the plasma, and thus was not entitled to an exemption certificate, based on *Community Blood and Plasma Service, Inc. v. State*, 267 So.2d 176 (Ala.Civ.App. 1972). The Alabama Court of Civil Appeals held in *Community Blood and Plasma* that the transfer of blood to hospitals and other customers that subsequently transfused the blood into humans constituted a service, not a sale, based on Code of Ala. 1975, ' 7-2-314(4). The Administrative Law Division distinguished *Community Blood and Plasma*, however, because the source plasma in *Alabama Plasma* was not transfused into humans, as required for ' 7-2-314(4) to apply. The Department was thus directed to issue Alabama Plasma an exemption certificate. A copy of *Alabama Plasma* is attached to and made a part of this Opinion and Preliminary Order.

The Department is directed to notify the Administrative Law Division by November 15, 2000 if it agrees that the facts in this case are substantively identical to the facts in *Alabama Plasma*. If so, a Final Order will be entered directing the Department to issue the Taxpayer an Alabama exemption certificate, which the Taxpayer may use as specified in *Alabama Plasma*. If the Department disputes that the facts in this case are similar to *Alabama Plasma*, it should explain its position to the Administrative Law Division. Appropriate action will then be taken. If the Department does not respond by the above date, a Final Order will be entered directing the Department to issue the Taxpayer an exemption certificate.

This Opinion and Preliminary Order is not a Final Order. The Final Order, when entered, may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, '40-2A-9(g).

Entered October 24, 2000.