

COCA-COLA COMPANY  
D/B/A THE MINUTE MAID COMPANY  
P.O. BOX 1734  
ATLANTA, GA 30301-1734,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 06-1261

### **OPINION AND PRELIMINARY ORDER**

This case involves disputed final assessments of rental tax and use tax entered against the Coca-Cola Company, d/b/a The Minute Maid Company (“Taxpayer”), for June 2001 through May 2004. The Taxpayer timely appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. Assistant Counsel Margaret McNeill represented the Department. Theodore Ghiz represented the Taxpayer.

The Taxpayer submitted additional records to the Department after it appealed. The Department reviewed the records and indicated that the Taxpayer owes rental tax of \$98,053.65, but is due a use tax refund of \$86,182.32, for a net tax due of \$11,871.33, including interest through November 27, 2006.

The Taxpayer agrees with the Department’s adjustments, except concerning the tax assessed by the Department on sales it made to Ricketts Environmental Systems. The Taxpayer sold the items tax-free relying on a sales tax certificate submitted by Ricketts that was not a valid certificate. The Taxpayer contends that it should not be liable for tax on the sales because it believed in good faith that the certificate was valid.

The facts are undisputed.

The Taxpayer sells fountain dispensing equipment parts to numerous service contractors that use the parts to repair fountain equipment through which the Taxpayer's products are dispensed. Because the service contractors resell the parts, the Taxpayer sells the parts to the contractors tax-free at wholesale.

Ricketts is a service contractor located in Athens, Alabama. The Taxpayer sold repair parts to Ricketts tax-free during the subject period because Ricketts had provided the Taxpayer with a Uniform Multi-Jurisdiction Sales and Use Tax Certificate in May 1998. The certificate was signed by the company's president, showed that Ricketts was located in Alabama, and included an identification number. As indicated, the Taxpayer claims that it accepted the certificate in good faith, and thus should not be held liable for tax on the sales.

The Department argues that the Taxpayer is liable on the sales based on Department Reg. 810-6-1-.184. That regulation requires that a retailer is under a duty to know the general nature of a customer's business. The Department further contends that the identification number on the Ricketts certificate "is not even close to a number used by the Department, nor is it even a federal identification number. Instead, it looks like a social security number." Department's July 17, 2007 letter response at 1.

This issue has been addressed by the Administrative Law Division on numerous occasions. In *Alabama Liquidation & Collection Agency, Inc. v. State of Alabama*, S. 03-345 (Admin. Law Div. 12/11/2003), the issue was whether the taxpayer should be held liable for sales tax on tax-free sales it made to customers that had provided the taxpayer with invalid or non-existent sales tax numbers that the taxpayer believed to be valid. The Final Order in the case reads in pertinent part as follows:

The sale of tangible personal property to a licensed retailer for resale constitutes a nontaxable wholesale sale. Code of Ala. 1975, §40-23-1(a)(9); *State v. Advertiser Company*, 337 So.2d 942 (Ala. Civ. App. 1976). To be tax-free, however, the wholesale purchaser must provide the seller with a valid sales tax number. The burden is on the seller to know the general nature of the wholesale purchaser's business, and that the purchaser is in the business of reselling the type of property being purchased. Dept. Reg. 810-6-1-.184; see also, *Webster Enterprises, supra*.

The Taxpayer's owner testified at the October 28 hearing that when a customer provided him with a sales tax number, he assumed the number was valid, and consequently allowed the customer to purchase items tax-free. He conceded that he did not inquire as to the customer's business, or whether the customer intended to resell the goods at retail. He claimed, however, that he should not be held liable if a customer gave him an invalid or wrong number, or otherwise did not purchase an item for resale. The owner's testimony was forthright and believable. Unfortunately, he failed to fully understand his duty as a retailer under Alabama's sales tax law.

A retailer cannot blindly accept a sales tax number from a customer. Rather, as stated in Reg. 810-6-1-.184, a retailer is under a duty to know the general nature of his customer's business. If it is not readily apparent that a customer using a sales tax number intends to resell the goods being purchased, the retailer must inquire concerning the type of business engaged in by the customer. The burden must be on the retailer to police the proper use of tax numbers. Otherwise, the improper use of such numbers to buy items tax-free would be rampant.

If, however, the retailer exercises due care and reasonably believes that the customer intends to resell the goods, then the retailer can sell the goods tax-free. In that case, the retailer is relieved of liability, even if it is later discovered that the customer improperly purchased the item tax-free, again assuming that the retailer used due diligence in determining that the customer was in the business of and intended to resell the goods at retail.

#### *Alabama Liquidation at 4 – 6.*

The Administrative Law Division held in the above case that although the taxpayer's owner was unaware that the items were not being resold, he was nonetheless liable because he did not exercise due diligence by inquiring about the nature of the customers' businesses and whether they intended to resell the items.

In this case, Ricketts provided the Taxpayer with an apparently valid multi-jurisdictional sales and use tax certificate. That alone, however, is not sufficient to relieve the Taxpayer from liability. Rather, as indicated, the burden was also on the Taxpayer to inquire whether Ricketts was in the business of reselling the repair parts.

Unlike the customers in *Alabama Liquidation*, who were not in the business of reselling the items purchased from the taxpayer, Ricketts was in the business of reselling the repair parts to its service customers. The Taxpayer knew that Ricketts was in the business of reselling the parts. The Taxpayer thus exercised due care and reasonably believed that Ricketts was reselling the parts (which presumably it did). That fact, combined with the apparently valid sales tax certificate provided by Ricketts, is sufficient to relieve the Taxpayer from liability for tax on the Ricketts sales.

The Department indicates that Ricketts did not have a valid Alabama sales tax license number until August 2004. Consequently, Ricketts did not report and pay tax on the parts it purchased from the Taxpayer and resold at retail to its service customers in Alabama. The Department can now assess Ricketts for either sales or use tax on the parts because Ricketts was unlicensed during the period in issue, and thus did not file sales or use tax returns with the Department. Code of Ala. 1975, §40-2A-7(b)(2)a. allows the Department to assess tax at any time if no return is filed.

The Department is directed to remove the Taxpayer's sales to Ricketts from the use tax final assessment in issue. It should notify the Administrative Law Division of the adjusted amount due. A Final Order will then be entered.

This Opinion and Preliminary Order is not an appealable 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 August 29, 2007.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: Margaret Johnson McNeill, Esq.  
Gordon Jenkins  
Theodore H. Ghiz, Jr.  
Joe Cowen  
Mike Emfinger