

CHARLES LITTLE KIDDIE COLLEGE	§	STATE OF ALABAMA
SCHOOL, III, INC.		DEPARTMENT OF REVENUE
C/O SMITH & NORMAN, PC	§	ADMINISTRATIVE LAW DIVISION
P.O. BOX 680670		
PRATTVILLE, AL 36068-0670,	§	DOCKET NO. S. 07-710
Petitioner,	§	
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

FINAL ORDER

Charles Little Kiddie College School, III, Inc. (“Petitioner”) appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-8(a) concerning a denied sales tax exemption certificate. A hearing was conducted on May 6, 2008. Jim Norman represented the Taxpayer. Assistant Counsel Wade Hope represented the Department.

The Petitioner operates a commercial daycare business and also a pre-kindergarten (Pre-k) school, the Kiddie College School, at its location in Prattville, Alabama. The Pre-k school curriculum is approved and awarded by the State Department of Children’s Affairs. The Petitioner receives State grant funds for the Pre-k program, which it must match with its own funds.

The Petitioner must operate its Pre-k program pursuant to the same State guidelines and regulations as all other State-funded Pre-k programs. Those regulations dictate curriculum requirements and recordkeeping responsibilities, as well as teacher certification requirements, student discipline guidelines, equipment and supply guidelines, parent participation and children with disabilities requirements, enrollment goals and guidelines, and various other guidelines and requirements. The Petitioner also provides meals to the

Pre-k students.

The Petitioner maintains separate records concerning its commercial daycare business and its Pre-k school, as required by State guidelines. Funds from the two operations are also kept separate. The Pre-k program operates on the same time schedule as the regular school day for grade school children, and only two of the Pre-k students also use the Petitioner's daycare facilities.

The Petitioner argues that because its Pre-k program is State-funded and must comply with the strict guidelines and regulations of the State Department of Children's Affairs, the Pre-k program should be exempt for sales and use tax. It also contends that the previous owner had for 25 plus years also operated a commercial daycare and a State-funded Pre-k program, and that the Revenue Department had issued the previous owner an exemption certificate for the Pre-k program.

The Department examiner reviewed the Petitioner's exemption application and denied the exemption because, according to the examiner, the Petitioner operates a commercial daycare facility. See, Department Ex. 1. There was no mention of the Petitioner's separate Pre-k program.

Private and public schools in Alabama are exempt from Alabama sales and use tax. See, Code of Ala. 1975, §40-23-4(a)(15) and Dept. Reg. 810-6-3-.47.02, which is entitled "Private Schools, Sales to." Paragraph (1) of the regulation states that "[s]ales to private schools are specifically exempted from sales and use taxes." Paragraph (4) of the regulation defines "private school" to include "kindergartens at which pre-grammar-school age children are given initial instructions in the arts of reading, writing and the use of

numbers.” Paragraph (5) reads as follows:

The term "private school" does not include nurseries or day care centers. Where nurseries or day care centers and kindergartens are operated together, it is necessary that separate purchase records be kept to substantiate the exemption for the kindergarten. In the absence of separate records, the total purchases will be subject to the tax.

The above regulation clearly envisions that a business may operate a taxable commercial daycare or nursery business and also an exempt kindergarten program at the same location. In that case, tangible personal property purchased for use in the kindergarten would be exempt, as long as the operator maintained separate purchase records, which the Petitioner in this case does.

The Department contends that the Petitioner’s Pre-k program is not exempt because it is not a kindergarten. I see no substantive difference, however, between a kindergarten and a pre-kindergarten. The participating children in both are introduced to and taught the basics of reading, writing, and arithmetic. If a child goes to a pre-kindergarten program and later to a kindergarten, it is at the pre-kindergarten program that the child is “given initial instructions” in reading, writing, and arithmetic. Reg. 810-6-3-.47.02(4). And as discussed, the Petitioner also maintains separate records for its Pre-k program, as required by the regulation.

The Petitioner’s application for an exemption certificate for its Pre-k program should be granted. The certificate should specify that it applies only for items purchased exclusively for use in the Petitioner’s Pre-k program.

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

Entered June 27, 2008.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: J. Wade Hope, Esq.
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