ACTION TRUCK CENTER, INC. AND AAA COOPER TRANSPORTATION P.O. BOX 6827 DOTHAN, AL 36302-6827,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
Taxpayers,	§	DOCKET NO. S. 09-371
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER

AAA Cooper Transportation ("AAA") and Action Truck Center, Inc. ("ATC") petitioned the Revenue Department for a joint refund of State sales tax for July 2004 through June 2007. The Department denied the petition, and the companies (together "Taxpayers") appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(c)(5)a. A hearing was conducted on August 25, 2009. Bruce Ely and Matt Houser represented the Taxpayers. Assistant Counsel Wade Hope represented the Department.

FACTS

AAA operates a multi-state, long-haul trucking business, and is headquartered in Dothan, Alabama. AAA operated 81 terminals in 14 states during the period in issue.

ATC is a retail motor vehicle dealer also located in Dothan, Alabama. AAA purchased 1,055 truck tractors from ATC at retail during the subject period. ATC either delivered each new tractor to AAA's facility in Dothan, or a AAA employee picked up the tractor at ATC's location in Dothan and drove it to AAA's facility. AAA paid ATC the two percent Alabama sales tax and the applicable Houston County and City of Dothan sales taxes on the vehicles. ATC subsequently reported and remitted the tax to the appropriate jurisdictions.

AAA registered and titled all of the 1,055 tractors in Alabama. No sales tax drive-out exemption certificates were executed for any of the tractors. As discussed below, Code of Ala. 1975, §40-23-2(4) exempts from Alabama sales tax all vehicles purchased in Alabama that will be titled or registered outside of Alabama, and which are removed from Alabama within 72 hours of purchase; provided, the information concerning the exempt sale must be documented on a form, i.e., a drive-out certificate, approved by the Department. See also, Dept. Reg. 810-6-3-.42.03.

The tractors were initially prepared for use at the AAA facility in Alabama, i.e., decals were applied, Alabama tags and titles were applied for, etc. They were then assigned to a AAA terminal, where they were finally prepared for use and put into service hauling goods in interstate commerce.

AAA assigned 835 of the 1,055 tractors it purchased during the subject period to out-of-state terminals. AAA and ATC subsequently filed the joint refund petition in issue concerning the Alabama sales tax paid on those 835 tractors. The Department denied the refund, and this appeal followed.

ISSUES

The Taxpayers argue that AAA improperly paid sales tax when it purchased the tractors in issue because (1) the subject tractors first used outside of Alabama were not subject to Alabama use tax, and thus also cannot be subject to the complementary Alabama sales tax, and (2) the tractors were used in interstate commerce, and thus subjecting the tractors to Alabama sales tax would violate the Commerce Clause of the U.S. Constitution, art. 1, §8, cl. 3. I disagree with both arguments.

ANALYSIS

The Alabama sales tax is levied on the retail sale of tangible personal property in Alabama, unless the sale is statutorily exempt or is made to an exempt entity. Code of Ala. 1975, §40-23-1, et seq. The complementary Alabama use tax is on the use, storage, or consumption of tangible personal property in Alabama that was previously purchased at retail. See, Code of Ala. 1975, §40-23-60, et seq.[1] The intent of the use tax is to prevent consumers from avoiding Alabama sales tax by purchasing property outside of Alabama (presumably in a state with no or a lower sales tax), and then bringing the property into and using it in Alabama. *Ex parte Fleming Foods of Ala., Inc.*, 648 So.2d 577, 578 (Ala. 1994), cert. denied 115 S.Ct. 1690 (1995).

Alabama's courts have held that if a taxpayer purchases property outside of Alabama and subsequently uses the property in Alabama, the Alabama use tax does not apply if the sale of the property, had it occurred in Alabama, would not have been subject to Alabama sales tax. That principle was first announced in *State v. Bay Towing & Dredging Company*, 90 So.2d 743 (1956).

In *Bay Towing*, an Alabama business purchased used barges in Louisiana and subsequently used them in Alabama. The Louisiana seller was not in the business of selling barges at retail. The Department assessed the purchaser/user for Alabama use tax

[1] The use tax technically applies to all property purchased at retail that is intended for and subsequently first used, stored, or consumed in Alabama, regardless of whether the property is purchased inside or outside of Alabama. But to prevent double taxation, tangible property purchased at retail in Alabama and on which the Alabama sales tax is actually paid is exempted from the Alabama use tax. Code of Ala. 1975, §40-23-62(1).

on the barges.

The Alabama Supreme Court determined that because the Louisiana seller was not in the business of selling barges at retail, the sales were "casual" or "occasional" sales, and consequently, would not have been taxable retail sales had they occurred in Alabama. It thus held that the purchaser's otherwise taxable use of the barges in Alabama was not subject to the complementary Alabama use tax.

The Taxpayers, citing *Bay Towing*, argue that "the Alabama Legislature did not intend for a transaction to be subject to one tax but not the other. Accordingly, this Court should hold that the exemption from use tax that covers AAA's tractors (the 835 initially used outside of Alabama) should also apply to sales tax." Taxpayers' Brief at 9. The Taxpayers' reliance on *Bay Towing* is misguided.

To begin, the Taxpayers are confusing a transaction that is statutorily exempt from use tax with a transaction that is not subject to Alabama use tax to begin with. The 835 tractors first used by AAA outside of Alabama were not "exempt" from Alabama use tax, as argued by the Taxpayers. Rather, they simply were never subject to Alabama use tax because their first substantial and intended use was not in Alabama, as required for Alabama use tax to apply. See generally, *Boyd Brothers Transportation, Inc. v. State Department of Revenue*, 976 So.2d 471 (Ala. Civ. App. 2007).

In any case, a transaction (either the retail sale and/or subsequent use, storage, or consumption of property in Alabama) clearly may be subject to Alabama sales tax but not Alabama use tax, and vice versa. For example, if a Georgia resident buys furniture at retail from an Alabama retailer and takes the furniture back to Georgia for first use, Alabama

sales tax would apply, but not Alabama use tax. As discussed below, the fact that the purchaser takes the furniture across the State line, i.e., into interstate commerce, is irrelevant. Conversely, if an Alabama resident purchases furniture in Georgia and first uses it in Alabama, Alabama use tax would be due, but not Alabama sales tax.[2] But if the Taxpayers' position is correct, the Georgia resident that purchased the furniture in Alabama could simply announce that he intended to take the property for first use outside of Alabama, in which case, according to the Taxpayers, Alabama sales tax would not be due because the property would not also be subject to Alabama use tax. Clearly that is not the case. As explained below, a retail sale closed in Alabama is subject to Alabama sales tax, regardless of where the property is later used.

In short, the fact that the 835 tractors in issue were first used outside of Alabama, and thus not subject to Alabama use tax, does not also exclude or exempt the otherwise taxable retail purchase of the tractors in Alabama from the Alabama sales tax.

The Taxpayers cite *Suttles Truck Leasing, Inc. v. State of Alabama*, Docket S. 07-503 (Admin. Law Div. O.P.O. 7/22/2008) in support of their argument. *Suttles* involved trucks and trailers purchased by Suttles in Alabama and subsequently first used outside of Alabama, just as were the trucks in issue in this case. Suttles also failed to obtain (or at least failed to provide) sales tax drive-out exemption certificates for the vehicles, again just as in this case.

[2] The Alabama purchaser would, of course, be allowed a credit against the Alabama use tax for any Georgia sales tax paid on the furniture. Code of Ala. 1975, §40-23-65.

The Department assessed Suttles for use tax on the subject vehicles because after being first used outside of Alabama, they were later brought into and used in Alabama. The Administrative Law Division held that the Alabama use tax did not apply because Suttles did not purchase the vehicles for first use in Alabama, and they were substantially used in another state before being used in Alabama, citing *Boyd Brothers*, *supra*.

The Taxpayers argue that *Suttles* is on point, and that because the tractors in issue in this case, like the vehicles in *Suttles*, were not subject to Alabama use tax, they also were not subject to Alabama sales tax. But as discussed, the fact that a vehicle purchased in Alabama is intended for and first used outside of Alabama, and thus not subject to Alabama use tax, does not exclude or exempt the retail purchase of the vehicle in Alabama from the Alabama sales tax. The Department could have assessed Suttles for Alabama sales tax on the vehicles purchased at retail in Alabama and for which no drive-out exemption certificates were provided, but for whatever reason it incorrectly assessed use tax instead.

The Taxpayers also cite the Court's holding in *Boyd Brothers* that "Alabama may not impose a use-tax burden on a transaction occurring outside of Alabama when it fails to impose a complementary sales-tax burden on a legally identical transaction occurring inside Alabama." *Boyd Brothers*, 976 So.2d at 478, 479. That is, if Boyd Brothers had purchased the vehicles in issue in Alabama and then removed them for first use outside of Alabama, the vehicles would have been exempt from Alabama sales tax pursuant to the drive-out exemption, in which case they would also be exempt from use tax based on the *Bay Towing* rationale.

Bay Towing can be distinguished, however, because the barges in issue in *Bay Towing* were otherwise subject to Alabama use tax. The vehicles in *Boyd Brothers* were not otherwise subject to Alabama use tax because, as the Court of Civil Appeals explained, they were not intended for first use in Alabama, as required for the Alabama use tax to apply. Consequently, Alabama use tax was not due on the vehicles in issue in *Boyd Brothers*, regardless of whether they would have been exempt from Alabama sales tax had the sales occurred in Alabama.

The Court in *Boyd Brothers* also assumed that if Boyd Brothers had purchased the subject vehicles in Alabama, they would have been exempt from Alabama sales tax pursuant to the drive-out exemption. But vehicles purchased at retail in Alabama and subsequently first used outside of Alabama are not automatically exempted from Alabama sales tax. Rather, a purchaser must comply with the requirements of the drive-out exemption statute by titling or registering the vehicle outside of Alabama, removing the vehicle from Alabama within 72 hours, and properly completing a drive-out certificate. Section 40-23-2(4). If those requirements are not satisfied, as in this case, the exemption does not apply and sales tax is due. Consequently, the Court's assumption in *Boyd Brothers* that Alabama "fails to impose a complementary sales-tax burden on a legally identical transaction occurring inside Alabama" is not correct in all cases. Rather, sales tax is generally imposed on the retail purchase of all vehicles in Alabama, although some vehicles may qualify for the drive-out exemption. The tractors in issue did not qualify for the drive-out sales tax exemption, and thus were subject to Alabama sales tax.

In summary, an otherwise taxable retail sale of a motor vehicle in Alabama is statutorily exempt from sales tax only if the drive-out exemption requirements are satisfied. AAA admittedly failed to comply with the drive-out requirements concerning the subject tractors, and instead titled the tractors in Alabama, primarily as "a matter of convenience and efficiency. . . ." Taxpayers' Brief at 4. The tractors were thus subject to Alabama sales tax. The Department is correct that if all vehicles sold in Alabama that are subsequently removed from and first used outside of Alabama are per se exempt from Alabama sales tax, the Legislature's enactment of the drive-out exemption would have been unnecessary. It is presumed that the Legislature did not enact a meaningless statute. *Druid City Hospital Board v. Epperson*, 378 So.2d 696 (Ala. 1979).

I also disagree that requiring AAA to pay Alabama sales tax on the tractors used in interstate commerce would violate the Commerce Clause.[3]

The Commerce Clause prohibits states from imposing a tax or taxing scheme "which discriminates against interstate commerce . . . by providing a direct commercial advantage" to in-state versus out-of-state businesses. *American Trucking Assocs., Inc. v. Scheiner*, 107 S.Ct. 2829 (1987). "[A] state may not tax a transaction or incident more heavily when it crosses state lines than when it occurs entirely within the State." *Armco Inc. v. Hardesty*, 104 S.Ct. 2620, 2624 (1987).

[3] The Taxpayers are seeking a refund of only the sales tax paid on the 835 tractors that were assigned to out-of-state terminals. They thus concede that sales tax was owed and correctly paid on the tractors assigned to in-state terminals. But those tractors were also used in interstate commerce, and thus also could not be constitutionally taxed if the Taxpayers' Commerce Clause argument was correct. The Taxpayers' constitutional argument is, however, incorrect for the reasons explained below.

The Taxpayers, citing *Ex parte Hoover*, 956 So.2d 1149 (Ala. 2006), argue that subjecting the tractors in issue to Alabama sales tax would discriminate against interstate commerce, and thus violate the Commerce Clause. *Ex parte Hoover* is, however, clearly distinguishable from this case.

In *Ex parte Hoover*, the Department assessed an out-of-state governmental entity for Alabama sales tax on its purchase of sand and gravel in Alabama. The Alabama Supreme Court found that the purchases in Alabama by the out-of-state entity involved interstate commerce, and were thus subject to Commerce Clause scrutiny. The Court held that subjecting the foreign governmental entity to Alabama sales tax while exempting all Alabama governmental entities facially discriminated against the out-of-state entity, and thus violated the Commerce Clause.

There is, however, no discrimination or disparate treatment between out-of-state and in-state taxpayers in this case. The retail sale of motor vehicles in Alabama is subject to sales tax, regardless of whether the purchaser resides inside or outside of Alabama. That is, Alabama residents are not favored over out-of-state residents, unlike in *Hoover*, where exempt Alabama governmental entities were favored over the non-exempt out-of-state entity.

Nor does the drive-out exemption result in discrimination against out-of-state motor vehicle purchasers. The exemption applies equally to out-of state and in-state purchasers, as long as the requirements of the exemption statute are satisfied.

The Alabama sales tax also does not hinder interstate commerce. The Alabama sales tax is a discrete, nonrecurring tax on the retail sale of tangible personal property in

Alabama. The tax attaches when the sale is closed in Alabama, and it is irrelevant that the subject property may later enter or be used in interstate commerce. The U.S. Supreme Court's holding in *Oklahoma Tax Comm'n v. Jefferson Lines, Inc.*, 115 S.Ct. 1331 (1995), is directly on point.

In *Jefferson Lines*, Oklahoma assessed state sales tax on bus tickets sold in Oklahoma for routes that originated in Oklahoma but involved travel outside of Oklahoma.[4] The lower federal courts struck the assessment, holding that the tax violated the Commerce Clause because it imposed an undue burden on interstate commerce and was not fairly apportioned.

The Supreme Court reversed, holding that the Oklahoma tax satisfied the four pronged Commerce Clause test announced in *Complete Auto Transit, Inc. v. Brady*, 97 S.Ct. 1076 (1977). The Court held in *Complete Auto* that a sales tax passes Commerce Clause scrutiny if (1) it is applied to an activity with a substantial nexus with the state, (2) is fairly apportioned, (3) does not discriminate against interstate commerce, and (4) is fairly related to services provided by the state.

The Court first held in *Jefferson Lines* that the sale of the bus tickets had a nexus with Oklahoma because the tickets were purchased in Oklahoma and the service originated there. *Jefferson Lines*, 115 S. Ct. at 1330. Likewise, the tractor sales in issue clearly had a nexus with Alabama because they occurred in Alabama and the seller and purchaser were both located in Alabama.

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[4] Unlike the Alabama sales tax, which is levied only on the retail sale of tangible personal property, the Oklahoma sales tax is also on various services, including transportation for hire. See, Okla. Stat., Tit. 68, §1354(1)(C) (Supp. 1988).

The Court next found that apportionment of the sales tax base was not required, holding that a nonrecurring sales tax imposed by a state on transactions within the state is both internally and externally consistent. The Oklahoma tax was internally consistent, that is, there was no threat of multiple taxation, because "[i]f every State were to impose a tax identical to Oklahoma's, that is, a tax on ticket sales within the State for travel originating there, no sale would be subject to more than one State's tax." *Jefferson Lines*, 115 S.Ct. at 1338. Alabama's sales tax is likewise internally consistent because it applies only to sales closed in Alabama, and such sales could not be subject to a similar sales tax in another state.

The Court also found the Oklahoma tax to be externally consistent, i.e., the tax was fairly attributable to economic activity within Oklahoma, and that apportionment or division of the tax base was not required.

> In reviewing sales taxes for fair share, however, we have had to set a different course. A sale of goods is most readily viewed as a discrete event facilitated by the laws and amenities of the place of sale, and the transaction itself does not readily reveal the extent to which completed or anticipated interstate activity affects the value on which a buyer is taxed. We have therefore consistently approved taxation of sales without any division of the tax base among different States, and have instead held such taxes properly measurable by the gross charge for the purchase, regardless of any activity outside the taxing jurisdiction that might have preceded the sale or might occur in the future. (cite omitted) Such has been the rule even when the parties to a sale contract specifically contemplated interstate movement of the goods either immediately before, or after, the transfer of ownership. (cites omitted) The sale, we held, was "an activity which . . . is subject to the state taxing power" so long as taxation did not "discriminat[e]" against or "obstruc[t]" interstate commerce, (cite omitted), and we found a sufficient safeguard against the risk of impermissible multiple taxation of a sale in the fact that it was consummated in only one State. (emphasis added)

Jefferson Lines, 115 S. Ct. at 1339.

Apportionment of the gross proceeds from the sale of the subject tractors in Alabama was also not required, even though AAA and ATC may have anticipated that some (or all) of the tractors would be used in interstate commerce. As previously discussed, a state may assess sales tax on the full sales price, even though "the parties to (the) sale contract specifically contemplated interstate movement of the goods either immediately before, or after, the transfer of ownership." *Jefferson Lines*, 115 S.Ct. at 1139.

The Court next rejected the argument that the Oklahoma sales tax discriminated against interstate commerce, as follows:

> Jefferson takes the additional position, however, that Oklahoma discriminates against out-of-state travel by taxing a ticket "at the full 4% rate" regardless of whether the ticket relates to "a route entirely within Oklahoma" or to travel "only 10 percent within Oklahoma." Brief for Respondent 40. In making the same point, *amicus* Greyhound invokes our decision in *Scheiner*, which struck down Pennsylvania's flat tax on all trucks traveling in and through the State as "plainly discriminatory." 483 U.S., at 286, 107 S.Ct. at 2840. But that case is not on point.
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> In *Scheiner*, we held that a flat tax on trucks for the privilege of using Pennsylvania's roads discriminated against interstate travel, by imposing a cost per mile upon out-of-state trucks far exceeding the cost per mile borne by local trucks that generally traveled more miles on Pennsylvania roads. *Ibid*. The tax here differs from the one in *Scheiner*, however, by being imposed not upon the use of the State's roads, but upon "the freedom of purchase." *McLeod v. J.E. Dilworth Co.*, 322 U.S., at 330, 64 S.Ct., at 1025. However complementary the goals of sales and use taxes may be, the taxable event for one is the sale of the service, not the buyer's enjoyment or the privilege of using Oklahoma's roads. Since Oklahoma facilitates purchases of the service equally for intrastate and interstate travelers, all buyers pay tax at the same rate on the value of their purchases. See *D.H. Holmes*, 486 U.S., at 32, 108 S.Ct., at 1624, cf. *Scheiner, supra*, 483 U.S., at 291, 107 S.Ct., at 2844 ("[T]he amount of Pennsylvania's . . . taxes owed by a trucker does not vary directly . . . with some . . . proxy for value obtained from the State"). Thus, even if dividing Oklahoma sales taxes by in-state miles to be traveled produces on average a higher figure when interstate trips are sold than when the sale is of a wholly domestic journey, there is no discrimination against interstate travel; <u>miles traveled within the State simply</u>

> are not a relevant proxy for the benefit conferred upon the parties to a sales transaction. As with a tax on the sale of tangible goods, the potential for interstate movement after the sale has no bearing on the reason for the sales tax. See, *e.g., Wardair Canada, Inc. v. Florida Dept. of Revenue*, 477 U.S. 1, 106 S.Ct. 2369, 91 L.Ed.2d 1 (1986) (upholding sales tax on airplane fuel); cf. *Commonwealth Edison Co.*, 453 U.S. at 617-619, 101 S.Ct., at 2953-2954 (same for severance tax). Only Oklahoma can tax a sale of transportation to begin in that State, and it imposes the same duty on equally valued purchases regardless of whether the purchase prompts interstate or only intrastate movement. There is no discrimination against interstate commerce. (emphasis added)

Jefferson Lines, 115 S.Ct. 1345.

The Alabama sales tax on sales closed in Alabama likewise does not discriminate against interstate commerce because it applies whether the property is subsequently used in-state, out-of-state, or both. "As with a tax on the sale of tangible goods, the potential for interstate movement after the sale has no bearing on the reason for the sales tax." *Jefferson Lines*, 115 S.Ct. at 1345.

Finally, the Court succinctly held that the Oklahoma tax satisfied the fourth prong of *Complete Auto* because it was fairly related to the services provided by Oklahoma. "The tax falls on the sale that takes place wholly inside Oklahoma and is measured by the value of the services purchased." *Jefferson Lines*, 115 S.Ct. at 1346. The same applies in this case to the Alabama sales tax measured by the value of the tractors purchased by AAA in Alabama. Alabama clearly provided services to both Taxpayers for which it can ask something in return.

The Taxpayers also cite *Boyd Brothers* in support of their claim that the use tax at §40-23-61(c) is unconstitutional when applied to vehicles that travel in interstate commerce. In *Boyd Brothers*, the Court of Civil Appeals held that the "alternative" use tax levied at

Code of Ala. 1975, §40-23-61(e) was unconstitutional, citing the U.S. Supreme Court's holding in *Scheiner*. The subparagraph (e) use tax is on new or used property that is used, stored, or consumed in the performance of a contract in Alabama. The Court stated as follows:

> The tax levied by subsection (e) of §40-23-61 suffers from the same kind of defects as the Pennsylvania tax (in issue in *Scheiner*). It is a flat two percent imposition that, the Department's auditors conceded, was not apportioned based upon actual miles traveled in the performance of a contract in Alabama. That means that a carrier based in Pensacola that makes just one delivery across the state line in Mobile will pay the same two percent of the value of his truck (and will have driven very few miles) as the intrastate carrier that makes daily deliveries and travels thousands of miles annually in Alabama.

Boyd Brothers, 976 So.2d at 482.

The Taxpayers argue that the use tax at §40-23-61(c) is likewise unconstitutional. "The rationale (of *Boyd Brothers* concerning the unconstitutionality of §40-23-61(e)), however, would apply equally to the 'regular' subsection (c) use tax." Taxpayers' Brief at 7. I disagree.

To begin, it is irrelevant whether the §40-23-61(c) use tax is unconstitutional concerning vehicles used in interstate commerce. The tax in issue is the Alabama sales tax, which, as discussed, is a nonrecurring tax on a discrete event occurring in Alabama. As illustrated by *Jefferson Lines* and the cases cited therein, the Alabama sales tax attaches when the sale is closed in Alabama, and it is irrelevant that the subject property may later be taken or used in interstate commerce.

In any case, the Alabama use tax levied at §40-23-61(c) does not violate the Commerce Clause. It is, like the complementary Alabama sales tax, a tax levied on an

exclusively intrastate event, i.e., the use, storage, or consumption of tangible property in Alabama, and as such does not implicate the Commerce Clause. "The use tax is not a recurring annual tax (unlike the taxes in issue in *Scheiner*), but is a one-time tax levied at the same rate as the sales tax and is complementary to the sales tax." *Ex parte Fleming Foods of Alabama, Inc.*, 648 So.2d 577, 579 (Ala. 1994). (Vehicles purchased outside of Alabama at retail and first used in Alabama were subject to Alabama use tax, even though they were later used in interstate commerce.) "The levy of the (use) tax attaches after the act of transportation ends and the property comes to rest in this state for use or consumption. (cite omitted) The insistence that the statute burdens interstate commerce or otherwise impinges the constitutions, state or federal, is therefore without merit. (cites omitted)" *Paramount-Richards Theatres, Inc. v. State*, 39 So.2d 380, 384 (Ala. 1949).

The *Boyd Brothers* Court in substance found that the subsection (e) use tax was not internally consistent because if other states levied an identical tax, the subject property would be subject to an unapportioned use tax in the various states in which the property was used in the performance of a contract. That is, multiple taxation of the same property could occur.

The subsection (c) use tax is internally consistent, however, and can thus be distinguished from the subsection (e) tax, because if every state were to impose an identical tax on property intended for and first used in the state, then property intended for and first used in Alabama, and thus subject to the Alabama use tax, could not be subject to the same tax in any other state.

In summary, requiring AAA to pay Alabama sales tax on its purchase of the subject tractors in Alabama does not favor in-state businesses over out-of-state businesses, nor does it hinder or impede interstate commerce. The Alabama sales tax is a nonrecurring tax based on a discrete event occurring in Alabama, and as illustrated by *Jefferson Lines* and the other cases cited above, it is irrelevant that the subject property may later be used in interstate commerce.

The Department's denial of the Taxpayers' joint refund petition is affirmed.

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

Entered January 12, 2010.

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BILL THOMPSON
Chief Administrative Law Judge

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