

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

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DOCKET NO. S. 85-165

OLON BELCHER LUMBER CO., INC. §
P. O. Box 160
Brent, Alabama 35034, §

§

Taxpayer. §

§

ORDER

This matter involves a disputed preliminary assessment of City of Brent sales tax entered by the Department against Olon Belcher Lumber Co., Inc. (Taxpayer) concerning the period July 1, 1982 - February 28, 1985. A hearing was conducted by the Department's Administrative Law Division on March 20, 1987. The parties were represented at said hearing by the Hon. Bruce P. Ely and the Hon. Alan Friday, for the Taxpayer, and assistant counsel J. Wade Hope, for the Department. Based on the evidence submitted in the case, and in consideration of briefs filed by both parties, the following findings of fact and conclusions of law are hereby made and entered.

FINDING

The Taxpayer operates a sawmill/manufacturing facility in Brent, Alabama, from which it makes retail, wholesale and exempt sales of various lumber products, cement and other miscellaneous items. During the period in dispute, the Taxpayer purchased quantities of diesel fuel, hydraulic oil, mineral spirits and other items from Belcher Oil Company (Belcher oil) of Centreville, Alabama.

All items purchased from Belcher Oil were purchased tax free by the Taxpayer under a "Regulation A" permit, as permitted by Code of Alabama 1975, §40-23-31 and Department Reg. 810-6-4-.14. A Regulation A permit allows certain manufacturers and others to purchase property without payment of tax, but requires them to subsequently report and pay the tax due, if any, on the ultimate sale, use or other disposition of the property. The property in dispute was subsequently withdrawn from inventory by the Taxpayer and used in the operation of its business.

The diesel fuel, which constitutes a majority of the sales in issue, was delivered by Belcher Oil to the Taxpayer's facility in Brent. The other miscellaneous items were generally picked up by the Taxpayer from Belcher Oil's facility in Centreville.

The Department audited the Taxpayer's records and assessed City of Brent sales tax on the items purchased from Belcher Oil by the Taxpayer under its Regulation A permit, which were subsequently withdrawn and used by the Taxpayer in its business. The City of Brent sales tax was levied by City Ordinance 82-5-1 in 1982, and is modeled after the state sales tax statutes, Code of Alabama 1975, §40-23-1, et seq. Section 4 of the ordinance provides that the tax "shall be subject to all definitions, exceptions, exemptions, proceedings, requirements, rules, regulations, provisions, penalties, fines, punishments and deductions that are applicable to the taxes levied by the state sales tax statutes . . ."

Accordingly, all provisions and interpretations of the statutes found in Title 40, Chapter 23 are applicable.

The primary issue raised by the parties is whether Belcher Oil had sufficient nexus with the City of Brent so as to allow the city, through the Department, to assess and collect the local sales tax on the transactions in issue. In addition to the sales to the Taxpayer, Belcher Oil's only significant contact or business within the City of Brent was the ownership and lease of a truck stop facility, sales to said truck stop facility, and occasional sales to several "farm accounts."

CONCLUSIONS OF LAW

The principle issue argued by both parties concerns the question of whether there was sufficient nexus between Belcher Oil and the City of Brent. As stated in Miller Bros. Co. v. Maryland, 347 U.S. 340, 74 S.Ct. 535, there must be "some link some minimum connection, between the state (taxing jurisdiction) and the person, property or transaction it seeks to tax."

However, the nexus issue necessarily involves the relationship between the taxing authority and the party against which the tax is being levied. In that the Taxpayer, the property (diesel fuel, etc.) and the transactions (withdrawals for use) sought to be taxed in the instant case were located within the City of Brent, that jurisdiction's local tax is clearly applicable and the nexus question concerning Belcher Oil is not relevant. Rather, the

determinative issue is whether the transactions in issue involved or constituted taxable retail sales within the City of Brent for which the Taxpayer is liable.

The subject property was purchased tax free under the Taxpayer's Regulation A permit. Regulation A permits are authorized by Code of Ala. 1975, §40-23-31 and corresponding Reg. 810-6-4-.14, which provide that when a manufacturer cannot determine with any degree of certainty the applicability of sales and use tax on the purchase of property, then such purchase shall be tax free, with the purchaser then responsible for reporting and paying directly to the Department any tax due on the eventual disposition of the property.¹

Making the purchaser responsible for direct payment of the tax is consistent with the fact that the purchaser/consumer is ultimately responsible for the tax, and that the seller precollects for convenience only, see Code of Ala. 1975, §40-23-26. As stated

¹The ability to purchase tax free under Regulation A is similar to that authority provided by Regs. 810-6-1-.56, 810-6-1-.89.02 and 810-6-1-.184, which allows certain businesses which sell both at retail and wholesale and also make withdrawals for use to purchase tax free and thereafter report and pay any tax which may be due on the ultimate sale or use of the property.

in §40-23-31, liability for the tax is shifted to the purchaser "so as to facilitate and expedite the collection of the tax which may be due from such consumer.

Having purchased the subject property tax free, the subsequent withdrawal and use of the property by the Taxpayer in its business constituted a taxable retail sale under the "withdrawal" provision of the sales tax law, Code of Ala. 1975, §40-23-1(a)(10). That section provides that the withdrawal for personal use or consumption of property previously purchased tax free constitutes a taxable retail sale, and the person so withdrawing is responsible for the tax due thereon. State Dept. of Revenue v. Bemis Bag Co., 100 So.2d 736; State v. T. R. Miller Mill Co., 130 So.2d 185; Alabama Precast Products, Inc. v. Boswell, 357 So.2d 985.

The Taxpayer argues that the seller, Belcher Oil, must first be subject to the tax, i.e., have sufficient nexus with the City of Brent, before any subsequent tax can be assessed. However, as set out above, Belcher oil, having made tax free sales to a Regulation A permit holder, is relieved of responsibility for any tax that may be due, and thus the issue of whether Belcher Oil may be subject to the City of Brent's taxing power is no longer relevant. It is not necessary that the seller (making non-taxable sales) must be subject to the local taxing jurisdiction as a prerequisite to the assessment and collection of the local tax against the purchaser/withdrawer that is within the taxing jurisdiction.

The fact that some of the sales by Belcher Oil were made outside of Brent, i.e. those sales involving items picked up by the Taxpayer in Centreville, would not remove those items from taxation in that the taxable event relating to all of the property in issue was the subsequent withdrawal and use of the property by the Taxpayer within the City of Brent. Regulation A not only shifts responsibility for the tax, but also changes the taxable event from the sale by the seller to the subsequent disposition (taxable sale or withdrawal) of the property by the purchaser.

The above considered, it is hereby determined that the transactions in dispute involved taxable sales within the City of Brent for which the Taxpayer is responsible. Accordingly, the assessment in issue is correct and should be made final as entered, with applicable interest as required by statute.

Done this 5th day of June, 1987.

BILL THOMPSON
Chief Administrative Law Judge