

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

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v.

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DOCKET NO. U. 87-206

BIRT T. BORENER
d/b/a Dothan TV Tempo
Route 5, Box 2008
Phenix City, AL 36867,

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Taxpayer.

ORDER

The Department assessed use tax against Birt T. Borener, d/b/a Dothan TV Tempo ("Taxpayer") for the period April 1, 1986 through December 31, 1986. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on March 3, 1988. Mr. Birt T. Borener appeared for the Taxpayer. Assistant counsel J. Wade Hope represented the Department. Based on the evidence submitted by the parties, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The Taxpayer is located in Phenix City, Alabama and distributes a weekly TV guide ("TV Tempo") in Dothan and the surrounding areas.

The Taxpayer's revenue is derived from the sale of advertisements which are included in the guide.

The guides are purchased by the Taxpayer from Tempo Graphics, Inc. of Athens, Georgia. To begin, the Taxpayer composes a rough layout, or dummy sheet, of the proposed guide for the coming week.

The entire preliminary layout is transmitted to Tempo Graphics, which performs the necessary composition work (typesetting, layout,

etc.). The negatives are then forwarded for printing to Greater Georgia Printers in Crawford, Georgia. Greater Georgia Printers provides the labor and materials necessary to print the guides. The finished product is then turned over to a trucking company for delivery to the Taxpayer.

During the audit period, the Taxpayer paid Tempo Graphics by a single check for the entire cost of the finished guides. The invoice from Tempo Graphics indicated a separate printing charge and a separate composition charge. Tempo Graphics subsequently paid Greater Georgia Printers for the printing services.

The Department audited the Taxpayer and assessed use tax based on the entire cost of the guides. The Taxpayer objects that the composition work performed by Tempo Graphics should not be included in the taxable measure. The Taxpayer does not dispute that the entire printing costs, i.e. labor, materials, etc., are taxable.

The use tax is levied on the sales price of property used, stored or consumed within Alabama, see Code of Ala. 1975, §40-23-61. "Sales price" is defined at Code of Ala. 1975, §40-23-60(10) as follows:

(10) SALES PRICE. The total amount for which tangible personal property is sold, including any services, including transportation, that are a part of the sale, valued in money, whether paid in money or otherwise, and includes any amount for which credit is given to the purchaser by the seller, without any deduction therefrom on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest charges, losses or any other expenses whatsoever; provided, that cash discounts allowed and taken on sales shall not be included and sales price shall not

include the amount charged for property returned by customers when the entire amount charged therefor is refunded either in cash or by credit. (emphasis added)

The Taxpayer argues that the composition charges should not be taxed. However, the Taxpayer's cost, i.e. the sales price, of the guides included both the composition and printing charges. Under the above definition, both printing and composition costs would clearly be a part of the total amount paid for the guides and thus would be included in the taxable measure. The Taxpayer purchased a finished product and the total amount paid would be subject to tax, without deduction for any costs relating thereto.

The above considered, the Department is hereby directed to make final the assessment as entered, with interest as required by statute.

Done this 8th day of April, 1988.

BILL THOMPSON
Chief Administrative Law Judge