

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. U. 87-232

OXFORD BAND BOOSTER CLUB, INC. §
P.O. Box 3137
Oxford, AL 36203, §

§

Taxpayer. §

ORDER ON REMAND

An Order was entered by the Administrative Law Division in this matter on April 1, 1988 directing that the use tax assessments in issue should be reduced and made final showing no tax due. Final assessments were entered on may 30, 1988 and the Department subsequently appealed to the Montgomery County Circuit Court pursuant to Code of Ala. 1975, §40-2-22.

The matter was remanded by the Circuit Court to the Administrative Law Division for the taking of further evidence. A hearing on remand was conducted on December 15, 1988. The only witness that testified at the remand hearing was Mr. William F. Barker. Mr. Barker is employed by the Oxford City Board of Education and is the band director for the Oxford High School Band.

Mr. Parker testified in relevant part as follows: Mr. Barker was not a member of the Oxford Band Booster Club, but attended all of its meetings because of his position as band director. At the meetings, Mr. Barker would inform the Booster Club as to the band's needs, and the Club would then give permission for Mr. Barker to order the necessary items.

Mr. Barker would order the items in the name of the school and remit one-third of the amount due with the order. All funds were provided by the Booster Club. The items were then delivered directly to the school. Mr. Barker would check the order for accuracy and then forward the remaining bills to the Booster Club for payment. The Booster Club at no time had control over the band items or any authority to direct how the band items would be used.

The Club's sole function was to provide the financial resources to pay for the items.

The Department's position is that the Booster Club is liable for the use tax because it purchased the items and had control over the items through its agent Barker when the items were delivered into Alabama. The Department's attorney stated at the hearing on remand as follows:

All I'm trying to say is that the band booster club had the authority up to the moment in time that the uniforms were actually transferred to the school or given to the school. Under the use tax law, the instant -- the amount of use that's involved only has to be an instant in time, whether that be a tenth of a second, just a minute instant in time. And all we're attempting to show through the testimony -- and I think it has been shown through the testimony of Mr. Barker -- is that he did act as an agent for the Oxford Band Booster Club in ordering the uniforms, sending a payment for the uniforms, and actually checking to see that the uniforms did meet the order. And all of that's being done under his authority as -- or as an agent of the Oxford Band Booster club. The moment those uniforms are actually received or in the next moment in time after they're actually received, they then are transferred over to the school and they become the property of the school after that.

However, the testimony of Mr. Barker is clear that he was

employed by and at all times acted on behalf of the Oxford High School Band. He was not an agent of the Booster Club. Further, the band items were delivered directly to and were at all time in the possession of or under the direction of Mr. Barker as band director. The Booster Club never used or had control over the items in Alabama, which is necessary for the use tax to apply. Mr. Barker testified in part as follows:

THE WITNESS: I'd like to respond just with a real simple answer. The booster club was formed with a sole function, only one, to provide items for the Oxford High School band programs. There was never an authority to make decisions.

ADMINISTRATIVE LAW JUDGE: Okay. Mr. Barker, who owned the band items or the band uniforms.

THE WITNESS: Oxford High School Band.

ADMINISTRATIVE LAW JUDGE: So basically, to summarize it, the band booster club was purchasing these band items for the band for the school?

THE WITNESS: That's correct.

Mr. Barker's answer that the band items were owned by the Oxford High School Band is a legal conclusion, but is clearly supported by the evidence in the case. when the items came to rest . within Alabama, they were under the control of and subsequently used by the band only, not the Booster Club.

The Order entered by the Administrative Law Division on April 1, 1988 was based on the fact that the school had exclusive possession, control and use of the band items upon their delivery into the State. Mr. Barker's testimony further supports that

conclusion. The Booster Club at no time used or controlled the band items, and thus cannot be liable for use tax thereon.

The above considered, the Order of April 1, 1988 is correct and should be upheld. The assessments in issue were properly entered showing no additional tax due.

Entered this 17th day of January, 1989.

BILL THOMPSON
Chief Administrative Law Judge