

MORRISON INCORPORATED, § STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
§ ADMINISTRATIVE LAW DIVISION  
Petitioner, § DOCKET NO. DR. 88-109  
v. §  
STATE OF ALABAMA §  
DEPARTMENT OF REVENUE.

DECLARATORY RULING

The Petitioner, Morrison Incorporated, has filed a petition for declaratory relief pursuant to §41-22-11, Code of Alabama (1975) and regulation 810-1-3-.02 (old regulation 810-1-2-.13) for the purpose of seeking an interpretation of and ruling regarding regulation 810-6-1-.145. Specifically, the Petitioner is seeking acceptance of a formula by which the value of food should be determined and sales tax should be computed on the withdrawal by the Petitioner of said food which is subsequently consumed by Petitioner's employees. The Department of Revenue has responded to the petition and has provided no argument or objection to the requests of Petitioner. No evidence was presented on the merits of the agreed formula, and the purpose of this ruling is only to formalize the agreement as entered into by the Petitioner and the Department. As agreed by the parties, the following declaratory ruling is hereby made and entered.

FINDINGS OF FACT

A. Petitioner does business in the State of Alabama, and is subject to the revenue laws of the State of Alabama.

B. As a substantial portion of its business, Petitioner owns, manages and controls numerous eating establishments throughout the state.

C. Petitioner has developed an Alabama Employee Meals Program at those establishments by which it furnishes meals to its employees as part of their compensation.

D. Pursuant to §40-23-1 et seq, (1975), the Alabama Department of Revenue is charged with the assessment and collection of sales taxes levied on the gross sales or gross receipts of all entities identified in §40-23-3 (1975), including corporations involved in the retail sale of food items.

E. Petitioner is a corporation involved in the retail sale of food items, and as such is subject to the collection of sales tax levied pursuant to §40-23-3, Code of Alabama (1975).

F. Pursuant to §40-23-31, Code of Alabama (1975), the Department of Revenue is charged with the duty of promulgating and issuing rules and regulations relating to the ascertainment, assessment, and collection of the sales tax described in §40-23-3 Code of Alabama (1975).

G. In accordance with the duty described in Paragraph F. above, the Department of Revenue has issued regulation 810-6-1-.145 which is related to the ascertainment, assessment and collection of a sales tax on the meals provided to the employees of restaurants and other eating establishments.

The pertinent portion of regulation 810-6-1-.145 reads as follows:

(2) On and after September 1, 1985, restaurants, cafes, and other eating establishments are liable for sales tax on meals furnished to their employees as part of a compensation plan. The measure of tax is the value of food withdrawn and consumed by the employees. (State v. Morrison Cafeterias Consolidated, Inc., 487 So.2d 898 (Ala. 1985) (readopted through APA effective October 1, 1982, amended April 3, 1987) (§40-23-1 (a)(6) and §40-23-1 (a)(10)).

H. Pursuant to regulation 810-6-1-.145, the Department of Revenue has assessed against and attempted to collect from Petitioner a sales tax on the value of the food withdrawn from Petitioner's inventory and consumed by Petitioner's employees pursuant to the Alabama Employee meals Program.

2. Petitioner has devised a method of calculating the value of food and taxes in question. The mathematical formula and definition of the symbols used in the mathematical formula are as follows:

$$[A \text{ divided by } B] \times [C \times (1.00 - [D - E])] = N$$

"A" is the total retail value of employee meals served in Morrison's Alabama Cafeterias.

"B" is the total number of employee meals served in Morrison's Alabama Cafeterias.

"C" is the average food cost percentage component of the retail value of all meals served in Morrison's Alabama Cafeterias.

"D" is the Morco Food Distributor's gross profit margin

percentage on food sold to Morrison's retail establishments.

"E" is the delivery cost percentage on food sold to Morrison's retail establishments.

A computation involving the figures "A" through "E" and the formula set out above, provide the dollar amount per meal served which would be subject to the applicable sales tax rate.

The applicable sales tax rate is set forth in §40-23-2 Code of Alabama (1975).

The computations above would be based upon figures drawn from the standard financial reports of Morrison Incorporated, and would be provided to the Department of Revenue.

The computations as to the average food cost, Morco Gross Profit Margin percentage and Delivery Cost percentage would be drawn from the figures available from the financial reports from the prior fiscal year.

The figures for the total retail value of employee meals and total number of employee meals served in Morrison's Alabama Cafeterias would be drawn from current figures.

A summary of current sales and sales tax due, with a remittance of that sales tax, would be submitted on a monthly basis to the Department of Revenue.

#### CONCLUSIONS OF LAW

1. Because the Petitioner is the assessed taxpayer, and will ultimately be liable for the sales tax due and owing, and because

the Petitioner will be required to maintain adequate records necessary to the computation of the sales tax, the Petitioner is a "person substantially affected" by a rule or regulation of the Department of Revenue as that phrase is used in §41-22-11 Code of Alabama (1975), and Department of Revenue regulation 810-1-3-.02 (old regulation 810-1-2-.13). As such, Petitioner has standing to file the petition for declaratory relief.

2. The Petitioner is entitled to a ruling as to the scope of, application to, and effect of regulation 810-6-1-.145, as it relates to the Petitioner.

3. The sales tax pursuant to this regulation is to be computed on the value of food withdrawn from Petitioner's inventory and consumed by its employees. Further, the necessary computations to determine that value must be reasonable, and must be designed to allow the ascertainment and levy of the full sales tax due the State of Alabama.

4. As agreed by the parties and as relates to the present Petitioner, the method of computation developed by Petitioner and set forth herein is a reasonable and valid method of determining the value of the food withdrawn from its inventory and consumed by its employees within the scope of §40-23-2 Code of Alabama (1975), the Supreme Court of Alabama decision in State v. Morrison, 487 So.2d 898 (1985) and regulation 810-6-1-.145; and that the suggested method of computation is in compliance with and provides

the intended application and effect of such authorities on Petitioner and allows the ascertainment and levy of the full sales tax on the Petitioner.

WHEREFORE, it is hereby ordered as follows:

The method of computation developed by Petitioner is a reasonable and valid method of determining the value of the food withdrawn from its inventory and consumed by its employees within the scope of §40-23-3 Code of Alabama (1975), the Supreme Court of Alabama decision in State v. Morrison,, 487 So.2d 898 (1985) and regulation 810-6-1-.145; and the suggested method of computation is in compliance with and provides the intended application and effect of such authorities on Petitioner and allows the ascertainment and levy of the full sales tax on the Petitioner.

Done this the 4th day of May, 1988.