

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. S. 89-165

STEWART PROPERTIES, INC.
P.O. BOX 415
Tuscaloosa, AL 35401,

§

§

Taxpayer.

§

FINAL ORDER

The Revenue Department assessed sales tax against Stewart Properties, Inc. (Taxpayer) for the period September 1, 1987 through March 31, 1988. The Taxpayer appealed to the Administrative Law Division and a hearing was initially scheduled for May 1, 1991. The hearing was continued to allow the parties to submit the matter on a joint stipulation of facts. The parties failed to file a joint stipulation and the matter was reset for August 14, 1991. The Taxpayer's representative, Harris W. Stewart, Jr., was notified of the hearing but failed to appear. The hearing proceeded with assistant counsel Beth Acker representing the Department. This Final order is based on the facts submitted at the hearing.

FINDINGS OF FACT

The Taxpayer contracted to sell sand to Martin Eby Construction Company, Inc. (Eby Construction) for a construction project on the Black Warrior River. The Taxpayer hired a common carrier to haul the sand to the Job site and subsequently billed Eby Construction a single price for the job. The transportation

charges were paid by the Taxpayer and were not set out as a separate item in the Taxpayer's billing to Eby Construction.

The Taxpayer failed to pay sales tax on the transaction and the Department subsequently entered the preliminary assessment in issue based on the total sales price charged by the Taxpayer, without deduction for Transportation charges. The Taxpayer argues that tax is not due on the transportation charges. Tax on the sand is not disputed.

CONCLUSIONS OF LAW

The issue is whether transportation charges paid by a seller to a common carrier and not billed as a separate item to the purchaser are subject to Alabama sales tax.

Code of Ala. 1975, §40-23-1(a)(6) defines "Gross Proceeds of Sales" in part as follows:

The value proceeding or accruing from the sale of tangible personal property, . . . without any deduction on account of the cost of the property sold, the cost of the materials used, labor or service cost, interest paid or any other expenses whatsoever. . . .

In addition, "Sale or Sales" is defined in part at Code of Ala. 1975, §40-23-1(a)(5) as follows:

Provided, however, a transaction shall not be closed or a sale completed until the time and place when and where title is transferred by the seller or seller's agent to the purchaser or purchaser's agent, and for purposes of determining transfer of title, a common carrier or the U.S. Postal Service shall be deemed to be the agent of the seller..... Provided further that, where billed as a separate item to and paid by the purchaser, the freight, postage or other transportation charge paid to a common carrier or the U.S.. Postal Service is not a part of the selling price.

In this case the common carrier was the Taxpayer's agent and the sale was not complete until delivery. Also, the transportation charges were paid by the Taxpayer and were not billed as a separate item to the purchaser. Consequently, the transportation charges could not be deducted and constituted a part of taxable gross proceeds subject to sales tax.

The above considered, the assessment in issue should be made final, with applicable interest.

Entered on August 26, 1991.

BILL THOMPSON
Chief Administrative Law Judge