

STATE OF ALABAMA	§	STATE OF ALABAMA
DEPARTMENT OF REVENUE,		DEPARTMENT OF REVENUE
	§	ADMINISTRATIVE LAW
DIVISION		
v.	§	DOCKET NO. S. 89-258
ANDALUSIA CONCRETE PRODUCTS, INC.	§	
Highway 29 North		
Andalusia, Alabama 36420,	§	
Taxpayer.	§	

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed State sales tax, City of Andalusia sales and use tax, and various county sales and use tax against Andalusia Concrete Products, Inc. ("Andalusia Concrete" or "Taxpayer") for all or part of the period May 1986 through April 1989. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on July 11, 1994. James R. Clifton represented the Taxpayer. Assistant Counsel J. Wade Hope represented the Department.

The issue in this case is whether the Taxpayer is liable for sales and use tax on concrete blocks sold to various mobile home dealers during the period in question.

The Taxpayer manufactures and sells concrete blocks and other concrete products primarily at its manufacturing facility in Andalusia, Alabama.

The Taxpayer had approximately \$3,500,000 in sales during the audit period. Of that amount, approximately \$178,000 represented sales of concrete blocks to mobile home dealers. The mobile home dealers used the concrete blocks to set-up mobile homes. As

discussed below, there is also evidence that the dealers also resold some of the concrete blocks over-the-counter at retail.

Andalusia Concrete started in business in 1968. William Starr purchased the business in 1986. Starr was informed at that time by employees at the business that sales tax had not been previously collected and was not due on concrete blocks sold to mobile home dealers. The business also maintained a list of sales tax numbers for its wholesale customers, which included the mobile home dealers in issue. Starr also knew from experience that his father, a mobile home dealer, had sold concrete blocks at retail in addition to using the blocks as set-up materials. Starr testified that he personally called on and was informed by the six or seven mobile home dealers in question that they were reselling some of the concrete blocks at retail. Based on the above information and knowledge, the Taxpayer sold concrete blocks to the licensed mobile home dealers tax-free at wholesale during the subject period.

The Department audited the Taxpayer, determined that the sales to the dealers were taxable, and based thereon assessed the tax in issue. The Department also taxed blocks sold tax-free to churches, contractors and others, which the Taxpayer does not contest. A sale to a licensed retailer for resale is a tax-free wholesale sale. Code of Ala. 1975, §40-23-1(a)(9)a. However, to be at wholesale, the purchaser must resell the item in the customary and normal course of business. If not, the sale, although to a licensed purchaser, would be taxable. For example, a grocery store

can purchase food items tax-free for resale, but cannot use its sales tax number to purchase tax-free a delivery truck, supplies or any other item not customarily resold in the normal course of business.

A retailer is obligated to know the general and customary nature of its customer's business. See, Dept. Reg. 810-6-1-.184; see also, Merriweather v. State, 842 So.2d 465 (Ala. 1949). However, the retailer is not expected or required to follow the item to its final use. Reg. 810-6-1-.184 states in part that "where a vendor sells to a customer who both uses and sells from the same stock of goods, such vendor may sell tax-free at wholesale all of the goods so used and resold".

The sale of concrete blocks (and other set-up materials) to a mobile home dealer that uses the blocks exclusively to set-up mobile homes is a taxable transaction. The dealer is using the concrete blocks in the performance of a contract, and thus is considered the retail consumer of the blocks. See, Code of Ala. 1975, §40-23-1(a)(10).

However, if a mobile home dealer also resells concrete blocks at retail, the dealer is considered a "dual operator" and is allowed to purchase all blocks tax-free using its sales tax number.

See, Dept. Reg. 810-6-1-.56(1). The dealer is then liable for sales tax either (1) on the cost on the materials withdrawn and used to set-up a mobile home, or (2) on the retail sales price if

the blocks are subsequently sold at retail.

This case turns on whether the Taxpayer knew or had reason to believe that the licensed mobile home dealers were in fact selling the concrete blocks at retail. If so, the Taxpayer properly sold the concrete blocks to the dealers at wholesale.

When William Starr purchased the business in 1986, he was informed by long-time employees at the business that sales tax had never been collected and was not due on concrete blocks sold to licensed mobile home dealers. Starr also knew from experience that his father, a mobile home dealer, had sold concrete blocks at retail in addition to using the blocks as set-up materials. The Department in fact deleted the sales to Starr's father from the audit as sales for resale.

Starr testified that he had personally called on the mobile home dealers in question, and was told that the blocks were being purchased for resale. The Taxpayer also contacted the dealers after the Department's audit, and the dealers again confirmed that they were buying the blocks for resale.

I understand the Department's position that mobile home dealers are generally not considered to be in the business of reselling concrete blocks at retail. However, the undisputed evidence in this case indicates that the mobile home dealers in question did in fact resell some of the concrete blocks at retail.

At the least, the Taxpayer reasonably believed, based on his experience and the information available at the time, that the

blocks were being resold by the dealers. Consequently, the Taxpayer properly sold the concrete blocks to the licensed mobile home dealers at wholesale. The dealers, having purchased the blocks using their sales tax numbers, then became liable for the sales tax on the blocks, either when withdrawn from inventory and used to set-up a mobile home, or when sold at retail.

The Taxpayer is, however, liable for tax on the blocks sold to churches, contractors and all other sales included in the audit except the sales to the licensed mobile home dealers.

The Department is directed to recompute the assessments in accordance with the above findings. A Final Order will then be entered for the adjusted amount due. The Final Order, when entered, may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered April 20, 1995.

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BILL THOMPSON  
Chief Administrative Law Judge