

BIRMINGHAM DISTRICT HOUSING §
AUTHORITY §
Post Office Box 55906 §
Birmingham, Alabama 35255-5906, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

DOCKET NO. S. 95-107

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

FINAL ORDER

The Birmingham District Housing Authority ("Taxpayer") and the Water Works and Sewer Board of the City of Birmingham ("Water Works Board" or "Board") jointly applied for a refund of utility gross receipts tax for the period August 1991 through August 1994. The Department denied the petition, and the Taxpayer appealed to the Administrative Law Division. A hearing was conducted on March 27, 1995. Frank Steele Jones represented the Taxpayer. Assistant Counsel Wade Hope represented the Department.

The issue in this case is whether the furnishing of water by the Water Works Board to the Taxpayer is exempt from the utility gross receipts tax pursuant to Code of Ala. 1975, §40-21-83(1). That issue turns on whether the Taxpayer purchased the water as agent for the federal government, in which case the utility services would be exempt.

The Revenue Department audited the Water Works Board for the period April 1991 through March 1994 and determined that the Board had failed to properly pay the utility gross receipts tax on water furnished to the Taxpayer. The Board paid the back taxes through

March 1994 as computed by the Department. The Board then billed the Taxpayer for the tax due each subsequent month, which the Taxpayer paid under protest. The Board and the Taxpayer subsequently applied for a refund of the tax with the Department.

The Department denied the refund, and the Taxpayer appealed to the Administrative Law Division.

The facts are undisputed.

The Taxpayer was organized pursuant to Code of Ala. 1975, §§24-1-1 through 24-1-45 for the purpose of providing and maintaining low income public housing in the Birmingham area. The Taxpayer purchased the water in issue for use in those public housing units.

The Taxpayer is funded by the United States Department of Housing and Urban Development ("HUD") pursuant to a contract between the Taxpayer and HUD. (See, Consolidated Annual Contributions Contract, Taxpayer's Exhibit 1). The Taxpayer concedes that it does not have the authority to bind the federal government by contract, or to pledge or commit the full faith and credit of the federal government. (See, Taxpayer's brief at p. 4).

Nonetheless, the Taxpayer argues that it acts as agent for the federal government in operating the low income housing because it is funded by the federal government and is obligated to comply with numerous federal guidelines and regulations.

The utility gross receipts tax is levied on the utility, but,

like the sales tax, is passed on by statute to the consumer. See, Code of Ala. 1975, §§40-21-82 and 40-21-86. Utility services furnished to an exempt consumer are thus not taxable.

Alabama is prohibited from taxing the federal government. Thus, if the Taxpayer purchased the water utility services in issue as agent for the federal government, the utility tax was not due and the refund in issue should be granted.

The Taxpayer argues that it acted as agent of the federal government in purchasing the water because HUD financed the Taxpayer's activities and had extensive control over how the Taxpayer operated the public housing units. However, that does not qualify the Taxpayer as an agent of the federal government.

Under Alabama law, an agent must have the authority, either express or implied, to contract for and thus bind the principal. Lawler Mobile Homes, Inc. v. Tarver, 492 So.2d 297 (Ala. 1986). A principal is also liable for the acts of an agent. Dare Productions, Inc. v. Alabama, 574 So.2d 847 (Ala.Civ.App. 1990).

The Taxpayer in this case admittedly does not have the legal authority to bind the federal government by contract, or to pledge the full faith and credit of the federal government. Thus, while Alabama law allows the Taxpayer to act as agent for and contract with the federal government, see Code of Ala. 1975, §§24-1-27(a)(8)

and 24-1-34, clearly the Taxpayer was not an authorized agent of the federal government in purchasing the water in issue or in otherwise operating the public housing units. Merely having to comply with federal guidelines in order to obtain federal money does not qualify the Taxpayer as an agent of the federal government.

State of Alabama v. King & Boozer, 62 S.Ct. 43 (1941), is analogous to the present case. In King & Boozer, a contractor contracted with the federal government to furnish and install materials on a construction project. The contractor purchased the materials, which were paid for with federal funds. The federal government also exercised control over the purchase of the materials. The United States Supreme Court affirmed that the sales were to the contractor and not to the exempt federal government, notwithstanding that federal funds were used and the federal government exercised control over the project. The legal incidence of the tax was on the taxable contractor, not the exempt government. The same is true in this case. The Taxpayer purchased the water in issue not as agent for the federal government, but in its capacity as a housing authority. Public housing authorities are not exempt from tax, and thus the utility gross receipts tax was due and properly paid. The refund in issue is accordingly denied.

This Final Order may be appealed to circuit court within 30

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days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered August 11, 1995.

BILL THOMPSON
Chief Administrative Law Judge