

DAVID J. TURNER
d/b/a State Line Wholesale
2863 Robinson Pt. Road
Milton, FL 32583,

Petitioner,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. S. 98-239

FINAL ORDER

The Revenue Department refused to issue a sales tax exemption certificate to David Turner (APetitioner@), d/b/a State Line Wholesale. The Petitioner appealed to the Administrative Law Division pursuant to Code of Ala. 1975, § 40-2A-8(a). A hearing was conducted on August 8, 1998 in Mobile, Alabama. The Petitioner and his brother, Mark Turner, appeared at the hearing. Assistant Counsel Duncan Crow represented the Department.

The issue in this case is whether the Petitioner must have a physical place of business in Alabama to be issued an Alabama sales tax exemption certificate.

The Petitioner operates as a motor vehicle wholesale dealer in Alabama and Florida. He lives in Florida, just across the Alabama state line. He also has a place of business in Florida.

The Department issued the Petitioner an Alabama motor vehicle wholesalers license pursuant to Code of Ala. 1975, § 40-12-390, et seq. The Petitioner also applied for an Alabama sales tax exemption certificate.

The Department denied the certificate because the Petitioner did not have a physical place of business in Alabama. The Petitioner appealed.

There are no statutory guidelines for obtaining an Alabama sales tax exemption certificate. In this case, the Department adopted the criteria for obtaining a motor vehicle wholesaler's license for purposes of determining if the Petitioner should be issued a sales tax exemption certificate. The Department claims that

a motor vehicle wholesaler is required to have a place of business in Alabama pursuant to § 40-12-392. Consequently, the Department argues that the Petitioner cannot be issued an exemption certificate because he does not have a place of business in Alabama. I disagree.

To begin, the Department issued the Petitioner a motor vehicle wholesalers license. If the criteria for obtaining a sales tax exemption certificate is the same as being licensed as a motor vehicle wholesaler, the Department should also issue the Petitioner a sales tax exemption certificate.

In any case, I disagree with the Department that a motor vehicle wholesaler must have a physical place of business in Alabama. That portion of § 40-12-392(a) relied on by the Department reads as follows:

If the applicant is a new motor vehicle dealer, or used motor vehicle dealer, the application shall contain the state sales tax number assigned to the applicant. The application shall enumerate the number of new and use vehicles sold during the previous calendar year; describe the exact location of the place of business and shall state that such location is a permanent one; that such location affords sufficient space upon and within which to adequately display one or more vehicles offered for sale and that an appropriate sign designates the location as being the place of business of a motor vehicle dealer; that it is a suitable place from which the applicant can in good faith carry on such business and keep and maintain books and records necessary to conduct such business, which shall be available at all reasonable hours for inspection by the commissioner.®

The above provision does require an applicant to maintain a place of business in Alabama at which motor vehicles are offered for sale. However, the provision applies only to new or used motor vehicle dealers, not motor vehicle wholesalers.

Motor vehicle wholesalers are governed by § 40-12-392(b). That section requires only that the wholesaler shall keep suitable records (at home or elsewhere) that are accessible and available for inspection by the Revenue Department. The Department is not claiming that the Petitioner failed to keep records, or refused to let the Department review his records.

A business also need not have a business location in Alabama to be doing business in Alabama. For example, an out-of-state corporation may be making retail sales in Alabama and may have nexus with Alabama by the presence of salesmen or substantial tangible property in Alabama. Clearly, the retailer would be doing business in Alabama and would be subject to Alabama tax, even though it does not have a physical location in Alabama. Under the appropriate circumstances, the retailer should be issued a sales tax exemption certificate by the Department.

It is undisputed that the Petitioner is in the business of buying and selling motor vehicles at wholesale in Alabama. As in the above example, the Petitioner is not required to have a physical location in Alabama. Requiring out-of-state businesses to have a business location in Alabama would also unconstitutionally discriminate against the out-of-state businesses, and unduly interfere with interstate commerce.

The Department has offered no other reason why the Petitioner should not be issued a sales tax exemption certificate. Under the particular circumstances of this case, the Department is directed to issue a sales tax exemption certificate to the Petitioner.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, § 40-2A-9(g).

Entered September 8, 1998.

BILL THOMPSON
Chief Administrative Law Judge

BT:ks

cc: Duncan Crow, Esq.
David J. Turner
James Browder