

HELISPEC LLC, AND ITS MEMBERS §
SANDRA L. SMITH, STEVEN G. HOLT,
MARK A. TOPPING §
269 FOSTER STREET
BRANTLEY, AL 36009-0065, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers, §

DOCKET NO. S. 08-661

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

This appeal involves State and local consumer use tax final assessments entered against the above Taxpayers for September 2004 through January 2007. A hearing was conducted on January 6, 2009. Gary Holt and Mark Topping attended the hearing. Assistant Counsel Wade Hope represented the Department.

Helispec, LLC ("Taxpayer") is located in Crenshaw County, Alabama. It painted and otherwise refurbished military aircraft under contract with the U.S. government during the period in issue. The Department audited the Taxpayer and assessed it for State and Crenshaw County use tax on various items used by the Taxpayer in its business. This appeal followed.

The Taxpayer argues that it should not be taxed on the paint that it used to paint helicopters that belonged to the U.S. government. It contends that because the paint became a part of the helicopters owned by the U.S. government, and because the government is tax-exempt, then the paint should also be nontaxable. I must disagree.

The Taxpayer is not selling the paint to the exempt government. Rather, it is providing a service by painting the aircraft, and thus, all materials used by the Taxpayer in performing that service, including the paint, are taxable to the Taxpayer. The

Taxpayer should have paid sales tax when it purchased the paint and other consumable supplies used on the government contracts, but because it failed to do so during the period in issue, use tax is now due on the paint and other items used and consumed by the Taxpayer in performing the contracts.

In *Alabama v. King & Boozer*, 62 S.Ct. 43 (1941), the taxpayer, King & Boozer, contracted with the federal government to construct an army camp in Alabama. King & Boozer was required to provide all supplies and materials needed to perform the contract. The issue was whether King & Boozer was liable for sales tax on the supplies and materials. King & Boozer argued that because the exempt government ultimately took title to the property, then the property should also be nontaxable.

The U.S. Supreme Court held that King & Boozer, as the purchaser, was liable for sales tax on the supplies and materials because it was required to provide those items in completing its contract with the government. The same rationale applies in this case. The Taxpayer was obligated to supply and apply the paint to the aircraft in accordance with the government contracts. The Taxpayer was thus the purchaser/consumer of the paint used to perform the service contracts, and is thus liable for use tax on its cost of the paint.

The Department cited three regulations in its Answer in support of its position, Regs. 810-6-1-.06, 810-6-1-.07, and 810-6-1-.08. Those regulations relate to automobile repair and painting businesses. The Taxpayer objects that the regulations are not on point. A July 1, 2009 letter from the Taxpayer reads in part as follows:

Helispec is not an Auto Body shop; we do not work on vehicles. We work on government aircraft; there is a big difference between a car and a Helicopter. Cars are painted for cosmetic purposes; aircraft is painted for corrosion prevention. . . . We feel that the Department of Revenue

recognizes that we are not an auto body shop due to the fact that they have already allowed parts and pieces placed on the aircraft to be tax exempt. How can one part of an aircraft be tax exempt when another crucial part of that aircraft such as paint (due to its necessary corrosion control) be subject to taxation.

I agree that there is an obvious difference between an automobile and a helicopter, but the difference is without legal significance in this case. That is, the rationale of the above cited regulations applies equally to automobiles and other tangible property, including helicopters, that are being painted.

Reg. 810-6-1-.06 provides that “[t]he painting of automobiles is a service by the painter. Receipts from such painting are not taxable. The paint, supplies, etc., used or consumed by the painter are taxable when sold to him.” That rationale applies equally to the helicopters that were painted by the Taxpayer. The fact that one function of the aircraft paint is to prevent corrosion is irrelevant, although I assume that painting a vehicle also prevents the vehicle body from corroding.

Reg. 810-6-1-.07 in substance provides that if an automobile repair shop provides intact parts, i.e., fan belts, pistons, etc., to a customer when it repairs the customer’s vehicle, the shop is selling those items at retail to the customer. That is consistent with the Taxpayer’s claim that the Department “allowed parts and pieces placed on the aircraft to be tax exempt.” Taxpayer’s July 1, 2009 letter. Per Reg. 810-6-1-.07, those “parts and pieces” were being sold to the customer at retail, but because the customer, i.e., the government, is tax-exempt, those sales were also tax exempt.

Paragraph (2) of Reg. 810-6-1-.07 is consistent with Reg. 810-6-1-.06 in that it provides that a repair shop “consumes such materials and supplies as paints or lubricants furnished by (the shop) as an incident to rendering a service. Sales tax is

thus due when the shop purchases those items from the supplier, but if sales tax is not paid, then the shop owes use tax when it uses the items to perform its contractual service.” Consequently, because the Taxpayer failed to pay sales tax when it purchased the paint, it is now liable for use tax on the paint it used “to perform its contractual service” with the government.

Finally, Reg. 810-6-1-.08 in substance reiterates Regs. 810-6-1-.06 and 810-6-1-.07 in that a repair shop owes sales tax when it sells parts, tires, accessories to customers at retail to a customer, but that the shop owes sales tax (or later use tax) on its cost of supplies that it consumes in providing a service.

In summary, when a business contracts to paint a vehicle, or helicopter, or any other tangible property, the business is providing a service, i.e., the application of the paint, and the transfer of the paint is incidental to that service.

The State and local use tax, as previously reduced, is affirmed. The penalties are waived under the circumstances for reasonable cause. Judgment is entered against the Taxpayer for State use tax and interest of \$3,405.28 and local use tax and interest of \$8,146.81. Additional interest is also due from the date the final assessments were entered, March 27, 2008.

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

Entered July 24, 2009.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: J. Wade Hope, Esq.
Mark Topping (w/enc.)
Joe Cowen
Mike Emfinger