

COUNTER TOP, INC.
3604 33RD STREET
NORTHPORT, AL 35476-2826,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. S. 08-699

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER

This case involves a final assessment of State sales tax entered against the above Taxpayer for February 2005 through December 2007.

The Taxpayer installs custom countertops, and also sells countertops over-the-counter at retail. It purchased all countertop materials at wholesale during the period in issue.

The Taxpayer reported sales tax during the subject period (1) on the retail sales price of the countertops sold at retail, and (2) on its wholesale cost of that portion of the custom-ordered countertop materials that were actually used on a job. It did not report and pay sales tax on that portion of the custom-ordered materials that were not used and returned to inventory until it either (1) sold the materials at retail, in which case sales tax was paid on the retail selling price, or (2) used the materials on another custom job, in which case it paid sales tax on its wholesale cost of the materials.

The Department audited the Taxpayer and determined that the Taxpayer had correctly reported and paid sales tax on its retail sales, but had incorrectly paid tax on only that portion of the customer-ordered materials that were actually used on the jobs for which they were ordered. Rather, the Department determined that the Taxpayer owed sales tax on its entire wholesale cost of materials ordered for a custom job, even if

a portion of the materials was returned to inventory and later sold at retail or used on another job. It assessed the Taxpayer accordingly. The Taxpayer appealed.

The Administrative Law Division entered an Opinion and Preliminary Order on March 31, 2009 holding that the Taxpayer's method of reporting and paying sales tax was correct. The Order also warned, however, that the Taxpayer must "maintain accurate records showing the percentage and cost of materials used on a job, and the percentage and cost of the materials returned to inventory for subsequent use or sale In all case, 100 percent of the entire piece (ordered for a custom job) should be taxed, assuming that a portion is not still in inventory or is not sold in an exempt transaction." Opinion and Preliminary Order at 5.

Because the case involved an issue of first impression in Alabama, the Order also directed that if the Department disagreed with the analysis in the Order, it should respond and explain why. The Taxpayer was also directed to respond.

The Department failed to respond by the date indicated, which was taken to mean that it does not disagree with the analysis in the Order. The Taxpayer's representative responded that he agreed with the analysis. He also indicated, however, that the Taxpayer did not have records from which its liability could be computed using the method specified in the Order.

The Administrative Law Division questioned the representative's response because if the Taxpayer reported and paid sales tax during the audit period as indicated, then it necessarily had adequate records. The representative responded that he was mistaken, and that the Taxpayer does have records sufficient to show its correct liability.

The final assessment is voided. Judgment is entered accordingly.

Under the circumstances, if the Department wishes to review the Taxpayer's records to establish that it accurately reported its sales tax under the method approved by the Opinion and Preliminary Order, it should apply for a rehearing within 15 days of this Final Order. Otherwise, this Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered August 10, 2009.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

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