

RAMLAC INVESTMENTS OF ALA., INC. §
3845 STRATHMORE DRIVE
MONTGOMERY, AL 36116-4613, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer, §

DOCKET NO. S. 09-112

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed Ramlac Investments of Alabama, Inc. (“Taxpayer”) for State sales tax for August 2005 through September 2008. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on March 5, 2009. The Taxpayer’s owner, Sammy Stevens, represented the Taxpayer. Assistant Counsel Wade Hope represented the Department.

The Taxpayer operated a retail furniture business in Montgomery, Alabama during most of the period in issue. The business was located in a flea market, which was owned and operated by Stevens.

The Taxpayer sold the furniture business to Northwest Furniture in late December 2007. It closed its sales tax account with the Department at that time. It also filed returns in early to mid-2008 and paid the remaining sales tax due for various months in 2007.

Stevens operated the store on behalf of Northwest Furniture in January and February 2008. Northwest Furniture, which never obtained a sales tax license with the Department, defaulted on its purchase agreement with Stevens. Stevens consequently took the business back in March 2008. He failed, however, to renew his sales tax license with the Department or report and pay the sales tax due from March 2008 forward.

The Department audited the Taxpayer for sales tax for the period in issue. The Department subsequently assessed the Taxpayer for pre-2008 tax due on (1) delivery charges on which the Taxpayer had failed to collect tax, and (2) taxable sales on which the Taxpayer had failed to add sales tax to the retail sales price. It also assessed the Taxpayer for the sales tax due from January through September 2008.

Stevens argues that when he delivered the furniture to his customers, he was performing a nontaxable service. He also claims that even if he failed to list sales tax on an invoice, he backed out the applicable sales tax from the lump-sum amount and reported and paid sales tax on the net amount. Finally, he claims he should not be liable for the tax due for the months of January and February 2008 because he did not own the business in those months. He also argues that he resold the business in mid-2008. He failed, however, to present evidence supporting that claim.

If a retailer delivers goods to a customer in its own vehicle, the delivery charge must be included in the taxable measure. Department Reg. 810-6-1-.178. The Department thus correctly assessed the Taxpayer on its delivery charges.

A retailer is also required to add sales tax to the retail sales price and collect the tax from the purchaser. The retailer must add the sales tax as a separate line on the invoice or sales ticket. "If not separately stated, it will be presumed that sales tax was not charged to the customer or collected. In such cases, the (taxable) measure will be the gross receipts."

Department Reg. 810-6-4-.20(3). Consequently, the Department correctly assessed the Taxpayer on the lump-sum invoices on which sales tax was not listed as a separate line item.

I agree that the Taxpayer should not be liable for January and February 2008. The Taxpayer's owner presented evidence, and the Department concedes, that Stevens sold the business in late December 2007 and closed his sales tax account, effective December 31, 2007. The Taxpayer did not resume operating the business until March 2008. Consequently, although Stevens ran the business on behalf of the purchaser in January and February 2008, the Taxpayer cannot be held directly liable for the sales tax due in those months. The Department did correctly assess the Taxpayer for March through September 2008 because it owned and operated the business in those months.

The Department is directed to remove January and February 2008 from the final assessment. It should notify the Administrative Law Division of the adjusted tax due. A Final Order will then be entered.

This Opinion and Preliminary Order is not an appealable Order. 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 29, 2009.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: J. Wade Hope, Esq.
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Joe Cowen
Mike Emfinger