

STATE OF ALABAMA  
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NOS. S. 88-168  
S. 88-169

MILCHEM, INC.  
3900 Essex Lane  
Houston, TX 77027,

§

§

MILPARK, A PARTNERSHIP  
3900 Essex Lane  
Houston, TX 77027,

§

§

Taxpayers

§

ORDER

The Revenue Department entered preliminary assessments of sales tax against the above Taxpayers for the periods October 1, 1983 through November 30, 1985 (Milchem, Inc.) and December 1, 1985 through June 30, 1987 (Milpark). The Taxpayers appealed to the Administrative Law Division and a consolidated hearing was conducted on November 17, 1988. Laura L. Crum, Esq., appeared on behalf of the Taxpayers. Assistant counsel Duncan Crow represented the Department. Based on the evidence presented by the parties, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

The relevant facts are undisputed.

The Department audited the Taxpayers and entered the assessments in issue based on (1) the disallowance of credit for returned merchandise, and (2) disputed transportation charges. The transportation charges are conceded by the Taxpayers. Thus, the

only issue in dispute is whether the Taxpayers should be allowed a credit against sales tax (reduction in gross proceeds) for merchandise returned by its customers.

The Taxpayers made retail sales of drilling fluids and related products in Alabama during the subject periods. The products were sold on an item or unit basis. On occasion a customer would purchase a number of separate items in a single transaction. That customer would also on occasion return some but not all of the items for a full refund. The issue to be decided is whether the Taxpayers should be allowed a credit under the above circumstances, when some but not all of the items are returned for a refund.

#### CONCLUSIONS OF LAW

Code of Ala. 1975, §40-23-1(a)(6) defines "Gross Proceeds of Sales" in part as follows:

The value proceeding or accruing from the sale of tangible personal property, . . . and "gross proceeds of sales" shall not include the sale price of property returned by customers when the full sales price thereof is refunded either in cash or by credit.

Department Reg. 810-6-1-.147 is titled "Returned Merchandise" and provides as follows:

(1) When property is returned by the purchaser and the seller refunds the full amount paid, there is no sale and the sales price of such returned property is not to be included in the gross proceeds of sale.

(2) When property is returned and a part, but not all, of the sales price is refunded, the full sales price is to be included in the gross proceeds of sales. This would include but not be limited to

property returned and a restocking fee is charged before refunding the balance of the purchase price. (State v. Leary & Owens Equipment Company).

(3) When the sale is on credit and less than the amount paid is refunded, the measure of the tax is the total amount of the sale. §40-23-1(6)

The Department contends that the exclusion from gross proceeds should apply on a "transactional" basis. That is, a credit should be allowed only if all of the items purchased in a transaction are returned for a full refund. No credit should be allowed for individual items if less than all of the property is returned.

However, the better interpretation is that each item should be considered separately. If property is returned and the customer receives a full refund, the seller should be allowed a credit for the sales price of that item. Each separate item clearly constitutes "property returned" within the purview of §40-23-1(a)(6) and Reg. 810-6-1-.147. The fact that other unreturned items were purchased in the same transaction and listed on the same purchase invoice is of no significance. If the full sales price of the returned item is refunded, a credit should be allowed.

The above considered, the assessments should be made final based only on the taxable transpiration charges. The Taxpayers should be allowed a credit for the returned merchandise in question. The final assessments so entered may be appealed pursuant to Code of Ala. 1975, §40-2-22.

Entered this 30th day of November, 1988.

---

BILL THOMPSON  
Chief Administrative Law Judge