

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

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DOCKET NO. S. 88-190

STEPHENS WHOLESALE BUILDING
SUPPLY COMPANY, INC.
715 39th Street
Birmingham, AL 35222,

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§

Taxpayer.

FINAL ORDER

The Revenue Department assessed sales tax against Stephens Wholesale Building Supply Company, Inc. (Taxpayer) for the period March 1, 1985 through February 29, 1988. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on October 2, 1990. Charles H. Stephens appeared for the Taxpayer.

Assistant counsel Dan Schmaeling represented the Department. This Final Order is based on the evidence presented by the parties.

FINDINGS OF FACT

The Department assessed sales tax against the Taxpayer based on a "test check" audit of the Taxpayer's books and records. A "test check" audit is used when a taxpayer's records are so voluminous that a review of all the records is not feasible. Instead, several months are randomly selected as agreed by the taxpayer and the Department, the average tax due for those months. is computed based on the taxpayer's records, and the average is projected over the entire audit period to determine the total tax due.

The Taxpayer in this. case agrees with the Department's audit except for the inclusion of one sale to American Eagle,

Inc./Gadsden Housing Authority in the amount of \$46,614.60. The Taxpayer contends that the sale was an exempt sale to the Gadsden Housing Authority. The Department argues that the sale was a taxable sale to the general contractor on the Housing Authority project, American-Eagle, Inc.

The Department's position is based on the fact that an invoice was issued for the subject materials by the Taxpayer to American Eagle, Inc. on September 25, 1986. The invoice directed that the materials should be shipped to the Greater Gadsden Housing Authority in care of American Eagle in Gadsden. A billing statement was subsequently issued by the Taxpayer on September 30, 1986 to the Gadsden Housing Authority in care of American Eagle, Inc., 3015 10th Avenue, Tuscaloosa, Alabama. The materials were subsequently paid for by check issued by American Eagle on October 9, 1986.

CONCLUSIONS OF LAW

Sales to municipalities are exempt from sales tax pursuant to Code of Ala. 1975, §40-23-4(a)(11). However, sales of materials to a contractor for use on a municipal or other government contract are not exempt from tax. See Reg. 810-6-1-.46 and State of Alabama v. King & Boozer, 314 U.S. 1, 62 S.Ct. 43.

In this case the sales invoice in question was issued by the Taxpayer to American Eagle and the materials were paid for by check issued by American Eagle. The sale was thus a taxable sale to

American Eagle and not a tax exempt sale to the Gadsden Housing Authority. The fact that the funds used by American Eagle to pay for the materials originated with the Housing Authority or that the materials were used on a Housing Authority project does not make the sale to American Eagle tax exempt, see King & Boozer, supra.

The above considered, the preliminary assessment is correct and should be made final as entered, with interest running to the date of entry of the final assessment.

Entered this the 9th day of October, 1990.

BILL THOMPSON
Chief Administrative Law Judge