

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. S. 89-227

MORGAN ELECTRIC SUPPLY CO.
P.O. Box 326
Gadsden, Alabama,

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Taxpayer.

§

FINAL ORDER

Morgan Electric Supply Company (Taxpayer) filed a petition for refund of sales tax with the Revenue Department concerning the period July 1, 1985 through May 31, 1988. The Revenue Department denied the petition and the Taxpayer appealed to the Administrative Law Division. A hearing was conducted on February 22, 1990. R. Reid Morgan, III appeared for the Taxpayer. Assistant counsel Gwendolyn Garner represented the Department. This Final Order Is hereby entered based on the evidence and arguments presented by the parties.

FINDINGS OF FACT

The Taxpayer sold electrical materials and supplies at retail to Choccolocco Construction Company, Inc. (Choccolocco) and Acker Electric Company (Acker) during the period July, 1985 through May, 1988. Choccolocco and Acker used the materials and supplies on a Joint construction project involving the City of Anniston Industrial Development Board (Anniston IDB) and National Aluminum Corporation (NACO) . The issue in dispute is whether the sales by the Taxpayer to Choccolocco and Acker were exempt from

sales tax under the industrial development board exemption provision, Code of Alabama 1975, §11-54-96.

The property in question was ordered by Choccolocco and Acker on purchase orders bearing the name of the Anniston IDB, National Aluminum Project. The sales were invoiced by the Taxpayer in the name of the IDB, c/o either Choccolocco or Acker. The Taxpayer was paid with checks issued on the account of "IDB-City of Anniston-Choccolocco Construction Company, Inc.-Agent". The Taxpayer understood at the time that all of its sales to Choccolocco and Acker involving the IDB project were tax exempt, and thus did not charge and collect sales tax on the sales.

NACO was initially appointed as agent for the Anniston IDB, and Choccolocco was subsequently appointed as agent for NACO. However, neither Choccolocco nor Acker were appointed as agent for the Anniston IDB during the period in question.

The Anniston IDB issued a resolution on November 7, 1988 setting out its belief that Choccolocco and all other contractors subcontractors and materialmen had been exempt from sales and use tax during the construction of the project. The resolution also recognized that Choccolocco had not been formally appointed as agent for the IDB, and in an attempt to retroactively create an agency status, the resolution ratified and adopted all past actions by Choccolocco and all other subcontractors, materialmen and suppliers taken in conjunction with the project.

CONCLUSIONS OF LAW

Code of Alabama 1975, §11-54-96 exempts all property and income of an industrial development board from Alabama taxation.

The Revenue Department has construed the above section to provide an exemption for sales and use tax, but only if three conditions are met: (1) the purchases must be made in the name of the board; (2) the board's credit must be obligated; and (3) the purchases must be paid for by the board with funds belonging to the board, see Department Reg. 810-6-3-.33, and also Champion International Corporation v. State, 405 So.2d 928; State v. Saginaw Steering Gear Division, 435 So.2d 92.

In the present case, the materials were purchased in the name of the board with purchase orders bearing the name of the Anniston IDB. However, the IDB's credit was not obligated because neither Choccolocco nor Acker were agents of the Anniston IDB during the period in question. The resolution issued in 1988 cannot retroactively create an agency status between the IDB and Choccolocco effective during the assessment period. Also, there is no evidence establishing that the purchases were paid for with funds belonging to the IDB. Consequently, the sales did not qualify as tax-exempt sales to an IDB under §11-54-96. The refund in dispute was thus properly denied by the Department.

This Order shall constitute the final order for purposes of Judicial review according to the provisions of Code of Alabama 1975, §41-22-20.

Done and ordered this the 27th day of April, 1990.

JAMES M. SIZEMORE, JR., Commissioner