

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

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v.

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DOCKET NO. S. 90-152

MOSS FURNITURE, INC.
d/b/a Moss Furniture Co.,
Direct Furniture Outlet and
Little House Interiors,
425 Broad Street
Gadsden, AL 35901,

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Taxpayer.

FINAL ORDER

The Revenue Department assessed State, county and city sales tax against Moss Furniture, Inc., d/b/a Moss Furniture Co., Direct Furniture Outlet and Little House Interiors (Taxpayer) for all or part of the period January, 1985 through December, 1987. The Taxpayer appealed to the Administrative Law Division and a hearing was conducted on April 25, 1991. Ben L. Zarzaur, Esq. and Darrell L. Cartwright, Esq. appeared for the Taxpayer. Assistant counsel Gwendolyn Garner represented the Department. This Final order is based on the evidence and arguments presented by the parties.

FINDINGS OF FACT

The relevant facts are undisputed.

The Taxpayer sells furniture at retail for cash and on credit. In August 1985, the Taxpayer set up a separate, wholly owned subsidiary corporation, Southeastern Credit Services, Inc. (Southeastern), to handle its delinquent accounts receivable.

During the period in issue, the Taxpayer sold all of its inactive accounts receivable to Southeastern without recourse for

40% of the unpaid balance due. Southeastern maintained accurate records which are available to the Taxpayer and the Department showing how much was collected on the accounts.

The issue in dispute is how much sales tax is owed by the Taxpayer on the transferred accounts and when is the tax due.

The Department initially argued that the Taxpayer owes tax on 100% of the delinquent accounts. That position is the basis for the assessments in issue. The Department modified its position in its post-hearing brief and now contends that the Taxpayer owes on only the 40% that was actually received for the accounts.

The Taxpayer contends that sales tax should be computed under either one of two alternative methods: (1) The Taxpayer should pay on only the proceeds actually received (40%); or (2) The Taxpayer should pay on the amount collected by Southeastern from the customers and should be required to provide adequate records through Southeastern by which the Department can verify how much was paid by the customers.

CONCLUSIONS OF LAW

A retail seller acts as a conduit and is required to collect sales tax from the customer and remit the tax to the Department. However, concerning credit sales, "in no event shall the gross proceeds of credit sales be included in the measure of the tax to be paid until collections of such credit sales shall have been made." See, Code of Ala. 1975, §40-23-8.

A simple answer in this case is that tax should be computed on the 40% that is received by the Taxpayer for the delinquent accounts. However, the 40% has no relationship to the tax actually collected from the customers and which the Taxpayer is required to pay to the Department. The customers may eventually pay more than the 40%, in which case tax would be paid by the customer but not remitted to the State. In no event should the Department receive less tax than is paid by the customer.

The seller is obligated to remit to the State any tax paid by the customer. The seller cannot avoid that duty by transferring accounts receivable to a third party. Rather, if a seller elects to transfer delinquent accounts to a third party for collection, the seller remains liable for any tax collected by the third party. The seller should be required to monitor how much is paid and thereafter remit the correct tax, to the Department.

A retail seller must keep or have access to accurate records from which the Department can determine how much tax is due. See, Code of Ala. 1975, 540-23-9. Consequently, if a retailer sells or transfers delinquent accounts, the retailer is required to keep accurate records from which the Department can determine how much is collected each month by the third party from the retail customer.

If the seller fails to maintain or provide access to accurate records showing payments by the purchasers, then the retailer must bear the consequences and the Department would be justified in assessing tax on the entire balance due.

In summary, the general rule is that a retailer remains liable on any transferred accounts and must report and pay tax on any amounts subsequently paid by the customers. The retailer is obligated to keep or provide the Department with access to records from which the Department can verify the amounts collected on the accounts. If the retailer fails to provide the necessary records, then the retailer must bear the consequences and must pay tax on the full amount due. In no event shall the retailer pay before the tax is collected, but the retailer is obligated to keep records showing how much if any has been paid.

In this case the Taxpayer has access to accurate records kept by Southeastern indicating how much was collected on the accounts receivable. The Taxpayer is responsible to pay tax on those collections and should report and remit tax to the Department on the actual amounts paid by the purchasers to Southeastern during the subject period.

The Department is directed to recompute the assessments in issue as set out above and thereafter make the assessments final, with applicable interest.

Entered on June 14, 1991.

BILL THOMPSON
Chief Administrative Law Judge