ALABAMA TAX TRIBUNAL

WARRIOR TRACTOR & EQUIPMENT COMPANY, INC.,	§	
Taxpayer,	§	DOCKET NO. S. 22-711-JP
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

OPINION AND PRELIMINARY ORDER

This appeal resulted from the denial by the Alabama Department of Revenue of a direct petition for refund filed by Warrior Tractor and Equipment Company, Inc. (the Taxpayer), concerning state and local sales tax for the periods July 2012 through June 2015. A trial date of October 30, 2023, was set, but the trial was reset for February 15, 2024, at the request of the Taxpayer. Following the trial on February 15, the case was remanded by the Tax Tribunal to the Revenue Department to allow the parties the opportunity to resolve issues that had been addressed during trial.

Subsequently, the parties filed a Joint Report on Remand which identified the issues they were able to resolve and those issues that remained unresolved. The parties agreed in the Joint Report that the Taxpayer was entitled to a refund of $2,965.12, plus interest, and they requested the Tax Tribunal's approval of that amount to be paid to the Taxpayer. In its Post-Trial Briefing Order and Schedule, the Tax Tribunal approved the immediate distribution of $2,965.12, plus interest, to the Taxpayer by the Revenue Department. And the Tax Tribunal set a briefing schedule at the request of the parties, with which the parties complied. The last of the briefs

was filed in late 2024.

Issues

The Taxpayer operates a retail dealership that sells industrial equipment and parts for use in the forestry, mining, construction, and oil and gas industries, and that provides service on such equipment. The Taxpayer has seven locations within the State of Alabama.

Mr. Neal McCracken, the Taxpayer's Controller, testified that there are three areas of dispute between the parties concerning the periods in issue. First, the Taxpayer disputes the Revenue Department's position that certain pieces of equipment sold by the Taxpayer should have been taxed at the state's general sales tax rate instead of the reduced machine rate based on use of the equipment. For example, the Taxpayer charged sales tax at a reduced rate on bulldozers and chippers based on customers' statements regarding their use or intended use of the equipment and on the Taxpayer's salesmen's understanding of the customers' businesses.

Second, the Taxpayer contends that customer trade-ins of equipment properly were taxed at reduced rates based on the use of the equipment for logging purposes or the harvesting of farm products or timber. Again, the Taxpayer based its charging of the reduced rates on its customers' stated intentions concerning use of the equipment, as well as the knowledge of the Taxpayer's salesmen concerning its customers' businesses. And, for the same reason, the Taxpayer challenges the Revenue Department's inclusion in the taxable measure of the value of certain

items taken in trade based on the use of those items.

Third, the Taxpayer contests the Revenue Department's disallowance of the reduced automotive rate charged by the Taxpayer for items that were attached to self-propelled machines.

Law and Analysis

Alabama's legislature has imposed a tax on the retail sale of tangible personal property at the general rate of 4% of the gross proceeds resulting from the sale. Ala. Code § 40-23-2(1). However, the legislature chose to tax sales of certain items at different - and lower - rates than the general 4% rate.

For example, retail sales of "machines used in mining, quarrying, compounding, processing, and manufacturing of tangible personal property" are taxed at a rate of 1.5% of the gross proceeds of such sales. § 40-23-2(3). And the retail sales in this state of automobiles are taxed at a rate of 2%. Ala. Code § 40-23-2(4).

As noted, concerning the first issue, Mr. McCracken testified that the Taxpayer charged reduced rates of tax on the sales of certain equipment based on the intended use of the equipment as expressed by its customers and as understood by the Taxpayer's salesmen who were familiar with the customers' businesses. For example, some bulldozers sold by the Taxpayer were taxed at the machine rate based on customer statements that the dozers would be used in the mining process for reclamation purposes.

In its Answer, to the Taxpayer's Notice of Appeal the Revenue Department

stated that it requested documentation from the Taxpayer's customers showing that the equipment was used in reclamation. However, with no such records being provided, the Revenue Department disallowed the Taxpayer's refund request as to those transactions, (The Taxpayer had paid final assessments entered by the Revenue Department for sales and use taxes and then filed refund petitions to recover those amounts.)

More generally, the Revenue Department contends in its post-trial brief that "a good faith argument is still without merit as a cursory glance at the names of the customers, or a glance on the internet by computer or phone, makes it fairly clear that these companies are not in the business of mining or farming." (Brief of Revenue Department, p. 8) The Taxpayer counters by citing certain rulings from the Revenue Department's former Administrative Law Divison which acknowledged the necessity that retailers rely on statements of purchasers as to their intended use of property. (Post-Hearing Brief of Taxpayer, p. 6; and Reply Brief, pp. 3-4)

For example, the Taxpayer cited *Truck Central of Dothan, Inc. v. State*, Admin. Law Div. Docket No. S. 02-166 (Opinion and Preliminary Order, August 21, 2002), concerning the responsibilty of a motor vehicle dealer in making a sale of a vehicle that purportedly was to be removed from Alabama and titled in another state. The Administative Law Divison stated as follows:

> A second and more difficult question involves a motor vehicle dealer's responsibility in making an exempt export sale. Retailers generally know when they make a sale whether the transaction is exempt or nontaxable, i.e. that the sale is a nontaxable wholesale sale, is to a tax-exempt entity, etc. The motor vehicle export exemption is different because the events necessary for the exemption to apply occur after the

> sale is completed. Consequently, in determining at the time of sale if the exemption applies, a motor vehicle dealer must necessarily rely on the purchaser's claim that the vehicle will be registered or titled outside of Alabama and removed from Alabama for first use within 72 hours. The Department concedes that if a dealer relies on a customer's claims in good faith, the dealer is not required to follow up and verify that the customer actually satisfies the criteria for the exemption.
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> As indicated, however, the dealer must rely on the customer's claims in good faith. A dealer's duty in that regard is analogous to the duty of a retailer making a nontaxable wholesale sale. Before making a wholesale sale, a retailer is required to know the general nature of the customer's business. If the customer is in the business of reselling the property in question, the retailer is not required to follow up and ensure that the property is in fact resold. *Merriweather v. State*, 42 So.2d 465 (Ala. 1949); *Cody v. State Tax Commission*, 177 So. 146 (Ala. 1937).

Truck Central of Dothan, Inc., at pp. 4-5.

The Revenue Department's Administrative Law Division also ruled that a taxpayer was not liable for sales tax on sales to a service contractor (a reseller of repair parts) who provided the taxpayer with a resale certificate that was discovered to be invalid. *Coca-Cola Co. d/b/a The Minute Maid Co. v. State of Alabama Department of Revenue*, Admin. Law. Div. Docket No. S. 06-1261 (Opinion and Preliminary Order, August 29, 2007). Based on the resale certificate, the taxpayer sold parts to the service contractor without collecting sales tax under the belief that the contractor was reselling the parts in transactions subject to sales tax. The Revenue Department argued that the taxpayer was liable based on Ala. Admin. Code r. 810-6-1-.184. That regulation states as follows:

> (1) Other than the exceptions noted in paragraphs (2), (3), (4) and (5) below, the seller is liable for sales or use tax on any sales for which the seller fails to collect the appropriate sales or use tax due. It is the seller's duty under the Sales and Use Tax Laws to know the general and customary business of the customer and to collect the amount of tax due.

The seller is not, however, expected to follow each article of goods sold to its final use; therefore, the seller is not to be held accountable for an isolated transaction made by the customer or for an isolated use of property by the customer. Where a seller sells to a customer who both uses and sells from the same stock of goods, the seller may sell, tax free, at wholesale all of the goods so used and resold. (Sections 40-23-26 and 40-23-67, Code of Ala. 1975).

(2) A seller, who acts in good faith and reasonably believes a tax exempt purchase is legal, is not liable for sales or use tax later determined to be due on a sale for which the purchaser provides the seller with a State Sales and Use Tax Certificate of Exemption (Form STE-1). (See Sales and Use Tax Rule 810-6-5-.02 State Sales and Use Tax Certificate of Exemption (Form STE-1) - Responsibilities of the Certificate Holder - Burden of Proof - Liability for Taxes Later Determined to be Due.) (Section 40-23-120).

(3) A seller who secures a properly completed and duly signed certificate pursuant to §40-23-4(a)(10) or §40-23-62(12), Code of Ala. 1975, and has no knowledge that such certificate is false when it is filed is not liable for sales or use tax on a sale later determined to be taxable. (See Sales and Use Tax Rule 810-6-3-.67.04 Certificate of Exemption - Fuel and/or Supplies Purchased for Use or Consumption Aboard Vessels Engaged in Foreign or International Commerce or in Interstate Commerce.) (Sections 40-23-4(a)(10) and 40-23-62(12)).

(4) A seller who secures from the purchaser a Form ST: EXC-1, or a variation thereof approved by the Revenue Department, is not liable for sales or use tax later determined to be due on sales of tangible personal property which the purchaser claims are exempt pursuant to Sections 40-23-4(a)(2), (4), or (22) or 40-23-62(5), (7), or (23). (See Rule 810-6-3-.20.01 Exemption Certification Form Respecting Fertilizers, Insecticides, Fungicides, and Seedlings (Form ST:EXC-1). (Section 40-23-4.3).

(5) A seller, who acts in good faith and reasonably believes a tax exempt purchase is legal, is not liable for sales or use tax later determined to be due on a sale for which the purchaser provides the seller with a Sales and Use Tax Certificate of Exemption for an Industrial or Research Enterprise Project (Form STE-2). (See Sales and Use Tax Rule 810-6-4-.24.01 Sales and Use Tax Certificate of Exemption for an Industrial or Research Enterprise Project (Form STE-2) - Responsibilities of the Certificate Holder - Burden of Proof - Liability for Taxes Later Determined to be Due. (Section 40-23-120)

The Administrative Law Division found that the taxpayer exercised due care and thus, was not responsible for the tax. The opinion also noted that the Revenue Department could assess the service contractor for not reporting and remitting tax on the parts it sold. *Coca-Cola Co.* at p. 4. *See also State of Alabama Department of Revenue v. Morgan Properties, Inc., d/b/a Morgan Oil Co.*, Admin. Law Div. Docket No. MISC. 91-260 (Final Order, August 19, 1992), stating that, in sales of fuel claimed to be for off-road use, a "retailer must usually rely on the purchaser's statement…" *Id.* at p. 4.

Here, Mr. McCracken testified that the Taxpayer relied on statements from its customers as to how the equipment being purchased would be used, as well as the Taxpayers' knowledge and understanding of its customers' businesses. This approach comports with the requirements of Rule 810-6-1-.184(1) that "[i]t is the seller's duty under the Sales and Use Tax Laws to know the general and customary business of the customer and to collect the amount of tax due." And, as stated in the rule, the Taxpayer here was not "expected to follow each article of goods sold to its final use ..." *Id.* There was no evidence that the Taxpayer obtained signed certificates from its customers regarding the intended use of the property, but the Tax Tribunal is unaware of the Revenue Department having such a form or certificate for use by taxpayers.[1] And if the Revenue Department believes that those who purchased equipment from the Taxpayer did not use the equipment for a purpose that warranted

[1] Prospectively, it may be beneficial to retailers and the Revenue Department that a form be created which would require a purchaser to attest to the intended use of a piece of equipment in order to purchase the equipment at a reduced rate.

a reduced sales tax rate, the Revenue Department has the authority to audit those purchasers and impose any additional tax legally due.

The Revenue Department stated in its Answer filed with the Tax Tribunal that it requested information concerning equipment that the Taxpayer taxed at the machine rate based on the equipment being used for reclamation purposes. Because the Revenue Department received no such information, "no adjustments were made for this portion of the refund request." Revenue Department Answer, p. 5. Of course, this statement conveys the Department's position that, if acceptable records concerning the use of equipment for reclamation had been produced, the Revenue Department would have agreed to the Taxpayer's charging of the reduced machine rate for mining purposes.

However, in its post-trial brief, the Revenue Department states that "none of the customers at issue appear to be involved in the reclamation process such that they would receive the reduced rate if reclamation could be classified as mining, which it cannot. Reclamation is a separate process from mining. Reclamation as its name would suggest is the process after mining by which the land is returned to its original state and/or the attempt is made to return the land to its original state subsequent to the actual mining. *See* Reclamation attached hereto as Exhibit C." Revenue Department Brief, p. 9.

But Revenue Department Exhibit C does not state expressly that reclamation is or is not a part of mining. The exhibit, which is a statement on sustainability by the Alabama Mining Association, could be read to support the Taxpayer's position

that reclamation is a part – even a required part – of mining. For example, it reads that "[t]oday's mining operations are highly regulated and must follow strict state and federal environmental laws that protect our air, land, and water as well as the people and animals who depend on these resources. Comprehensive reclamation requirements ensure that land used for mining is returned to its original contour and revegetated after it is mined. Bonding requirements provide assurance that reclamation will be completed even if a mining company defaults on its obligation. Sustainable mining requires a company to strictly adhere to these laws and regulations …"

The Revenue Department also refers to Ala. Code § 9-16-122(b)(1) but only quotes a phrase from a statement that money in the Abandoned Mine Reclamation Fund may be used for "[r]eclamation and restoration of land and water resources adversely affected by past coal mining …" The Department does not expound on its citation to argue how reclamation is not a part of mining.

For its part, the Taxpayer cites regulations of the Alabama Surface Mining Commission to attempt to show that reclamation is a required part of the mining process. Nevertheless, the assertion in the Revenue Department's brief that reclamation is separate from mining was not developed enough for the Tax Tribunal to ignore the Department's original position stated in its Answer. Therefore, based on the testimony of Mr. McCracken, the items related to reclamation also warranted the reduced machine rate.

Consequently, as to Issue 1, the Tax Tribunal rules in favor of the Taxpayer

concerning reduced rates charged on the sales of all disputed pieces of equipment.

The Tax Tribunal understands the second issue to involve essentially the same question as the first; *i.e.*, whether the Taxpayer correctly applied sales tax law to transactions involving trade-in equipment based on customers' statements concerning use of the equipment and the familiarity of the Taxpayers' salesmen with the business of the customers. Specifically, the Taxpayer contends that the equipment in question was to be used in harvesting farm products and, thus, that the value of the equipment received in trade properly was excluded from the sales tax measure, pursuant to Ala. Admin. Code r. 810-6-1-.22(1)(d). In the Revenue Department's brief, it argues against the Taxpayer's position for the same reasoning addressed in Issue 1.

As discussed in Issue 1, the Taxpayer properly applied Alabama sales tax law to the disputed items in Issue 2, based on the statements of its customers as to their intended use of the items in question and based on the salesmen's understanding of their customers' businesses.

The third issue involves the sale of attachments to equipment that the Taxpayer sold separately from the equipment but taxed at the reduced automotive rate. The Revenue Department argues that the attachments that were sold separately were not self-propelled and, thus, did not qualify for the automotive rate. The Taxpayer argues that it correctly charged the automotive rate because the attachments were replacement parts on self-propelled vehicles or were themselves self-propelled.

In Ala. Code § 40-23-2(4), sales tax is levied upon those "engaged or continuing within this state in the business of selling at retail any automotive vehicle or truck trailer, semitrailer, or house trailer, or mobile home set-up materials and supplies … [at] an amount equal to two percent of the gross proceeds of sale…" The term "automotive vehicle" is defined as "[a] power shovel, drag line, crawler, crawler crane, ditcher, or any similar machine that is self-propelled, in addition to self-propelled machines that are used primarily as instruments of conveyance." § 40-23-1(a)(12).

In Ala. Admin. Code r. 810-6-1-.12, automotive vehicles are addressed as follows:

> (1) The term "automotive vehicles" as used in the Sales and Use Tax laws shall mean and include, but shall not be limited to, automobiles, trucks, buses, tractors (crawler and pneumatic tired types), motorcycles, motor scooters, automotive industrial trucks, Ross Carriers, lift trucks, locomotive cranes, airplanes, tugs, motorboats with built-in motors, boats with outboard type motors attached thereto by attachments intended to be permanent rather than readily removable and which motors are controlled with remote controls built on or into the hull of said boat.
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> (2) In addition to the vehicles listed above, Sections 40-23-1(a)12 and 40-23-60(12), Code of Alabama 1975, defined "automotive vehicles" to include power shovels, drag lines, crawler cranes, ditchers and similar machines which are self-propelled, but which are not primarily used as instruments of conveyance. Equipment of this class is to be considered as falling within the automotive vehicle class treated for sales or use tax purposes the same as automobiles, trucks, buses, or tractors; provided, however, self-propelled machines which qualify as farm machines (see Rule 810-6-4-.07 *Farm Machines, Machinery, and Equipment*) or mining machines (see Rule 810-6-2-.43 *Machines Used in Mining, Quarrying, Manufacturing, Compounding, and Processing*) are taxed at the rate of tax prescribed for equipment in those respective classes. (Sections 40-23-1(a)12, 40-23-60(12), 40-23-2(4), and 40-23-61(c))

As stated, the Revenue Department contends that its disallowance of the automotive rate was proper because the attachments that were sold were not self-

propelled. The Taxpayer counters by citing Rules 810-6-1-.12 and 810-6-1-.22. The latter rule first states that the value allowed for tangible personal property taken in trade constitutes a payment toward the price of the property being purchased and, therefore, must be included in the taxable measure for sales tax purposes. However, an exception applies to the following:

> (c) The agreed value placed on any used part including tires of an automotive vehicle, truck trailer, semitrailer, or house trailer taken in trade as a credit or part payment on the sale of a new, used or rebuilt part or tire, for an automotive vehicle, truck trailer, semitrailer or house trailer; provided, however, this provision does not include batteries. (§40-23-2(1), Code of Ala. 1975).

Ala. Admin. Code r. 810-6-1-.22(c).

The Revenue Department's position is correct. As quoted, § 40-23-2(4) imposes a reduced sales tax rate upon automotive vehicles. And an automotive vehicle is defined as a self-propelled machine in § 40-23-1(a)(12). Attachments that are not self-propelled do not fit within the reduced-rate statutory provisions as automotive vehicles. And the Revenue Department's 810-6-1-.22 rule concerning used parts such as tires taken in trade does not overcome those provisions. Therefore, the attachments in issue that were not self-propelled properly were taxed by the Revenue Department at the general sales tax rate.

The Revenue Department is directed to recalculate the Taxpayer's refund petition in accordance with this Opinion and Preliminary Order and in accordance with the agreements between the parties and notify the Tax Tribunal of its recalculations no later than **August 29, 2025**.

Further, in its Post-Hearing Brief Statement of Facts, the Taxpayer recounts

the procedural history of this matter before the Revenue Department and the delay resulting from that history. For example, the Taxpayer states that, at the preliminary assessment stage, the hearings officer retired following the conference with the Taxpayer's representative. Then, the Revenue Department apparently entered multiple final assessments, but not all those assessments were delivered to the Taxpayer. Therefore, liens were filed regarding the taxes for which the Taxpayer had not received final assessments. The Revenue Department's new hearings officer agreed to reset consideration of those taxes and to release the liens, and the liens were released. However, the Taxpayer never received a response from the new hearings officer, and that hearings officer retired. The Taxpayer later received notices of seizure from the Revenue Department concerning the final assessments which the Taxpayer had not received. The Taxpayer paid the amounts claimed due and filed a refund petition which is the subject of this appeal.

Therefore, the Tax Tribunal remands this matter to the Revenue Department's Taxpayer Advocate for the Advocate to consider possible relief to the Taxpayer concerning the events summarized, pursuant to Alabama Code § 40-2A-4(b)(1). The parties should provide the Taxpayer Advocate with details of the relevant facts.

It is so ordered.

Entered July 31, 2025.

/s/ *Jeff Patterson*
JEFF PATTERSON
Chief Judge
Alabama Tax Tribunal

jp:ml

cc: Blake A. Madison, Esq.
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