

PUBLICATION

Alabama Tax Tribunal Rules Certain Freight Charges are Not Subject to Sales Tax

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In *Mike Kilgo & Associates, Inc. v. State of Alabama Department of Revenue*, the Alabama Tax Tribunal recently ruled that freight and shipping charges separately stated from other charges on a seller's invoice are not subject to Alabama sales tax.

In *Mike Kilgo & Associates, Inc.*, Kilgo caused the goods it sold to be delivered from its supplier to its customers by common carrier. The supplier invoiced Kilgo for the common carrier's freight charges, and Kilgo passed those charges on to its customers. In its customer invoices, Kilgo included separate, identifiable line items for the freight charges that the customer was to pay. Kilgo did not mark up any freight charges as its customers reimbursed Kilgo only for the exact amount that the common carriers charged. Kilgo did not charge its customers Alabama sales tax on the freight charges relying on Code of Alabama §40-23-1(a)(5), which excludes transportation charges from taxable gross proceeds if the charges could be specifically identified (i.e., were billed separately to the purchaser) and the purchaser paid the charges (i.e., ultimately bore or incurred the financial burden for the charges).

The Alabama Revenue Department reasoned that Kilgo could not exclude the freight charges from the sales tax base and should be collecting sales tax on the freight charges from its customers. The Alabama Revenue Department reasoned that Kilgo's suppliers, and not the common carriers, charged Kilgo for the freight charges, meaning Kilgo's customers were not directly paying excludable freight charges.

Nevertheless, Judge Thompson ruled that excludable freight charges included those paid directly and indirectly as in the case of Kilgo's customers:

In summary, the phrase "paid by the purchaser" in [Code of Alabama] §40-23-1(a)(5) should be construed to include instances when the purchaser directly pays the transportation charges, and also when the purchaser indirectly pays, i.e., bears the ultimate economic burden, for the deliveries.

If you are a seller and have collected sales taxes on transportation charges, or if you are a purchaser and have paid sales taxes on transportation charges, like those in *Kilgo*, there might be an opportunity to seek a refund of those taxes from the Alabama Department of Revenue. We believe such a refund claim would take the form of a Joint Petition for Refund, using Alabama Form ST-6, filed by both the seller and the purchaser. As with any claim for a tax refund, time is of the essence. However, any such claim should only be considered in the context of your particular situation and you should seek tax advice before filing such a claim. Furthermore, this decision by the Alabama Tax Tribunal can be appealed by the Alabama Department of Revenue.

For more information on how this issue may affect your business, or if we can assist you in analyzing your situation and the merits of a claim for refund of Alabama sales taxes and the preparation of a Joint Petition of Refund, contact the author of this alert, Ross Cohen, or any members of the Firm's Tax Group.