

PUBLICATION

Spotlight on Alabama: Service Personnel Do Not Create Sales Tax Collection Obligation in Localities

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When it comes to local sales and use taxes, the general rule in Alabama is that if a retailer makes a delivery in a city or county in which the retailer does not have either a place of business or sales people soliciting sales, then the retailer is not required to collect taxes in that city or county. This rule, which is discussed in our September 12, 2007, Tax Alert, is based on the 1997 decision by the Alabama Court of Civil Appeals in *Yelverton's Inc. v. Jefferson County, Alabama*. Not surprisingly, the *Yelverton's* rule has been unpopular with local taxing jurisdictions. More importantly, the rule is also unpopular with the Administrative Law Division of the Alabama Department of Revenue.

In a recent Opinion and Preliminary Order in *Cohens Electronics and Appliances, Inc. v. State*, the Administrative Law Judge once again criticized the holding in *Yelverton's* as being incorrectly decided, and cited his prior discussions in *Crown Housing Group, Inc. v. State and Diversified Sales v. State*. The facts of *Cohens Electronics* differ slightly from *Yelverton's*, *Crown Housing Group, Inc.*, and *Diversified Sales*, because those prior cases involved only installation and delivery. In *Cohens*, the repairmen also sold replacement parts and separately invoiced the customers for the parts. The Administrative Law Judge held, though, that this additional fact still did not create a taxable nexus under the *Yelverton's* rule. In addition, the Administrative Law Judge noted that although the number and frequency of visits by the taxpayer's repairmen would be relevant in determining whether due process nexus existed under the United States Supreme Court's reasoning in *Quill Corp. v. North Dakota*, decided in 1992, *Yelverton's* is nevertheless controlling and such factors are irrelevant to the local jurisdiction nexus analysis under Alabama law.

Although no change in the statutory law has occurred and the Administrative Judge in this administrative decision acknowledged that *Yelverton's* remains the law, this *Cohens Electronics* case is another signal that the Alabama Department of Revenue will likely continue to challenge the *Yelverton's* holding. In order to minimize any audit exposure, Alabama retailers should make certain they have no connections other than the service calls or delivery of goods in those local jurisdictions where they do not collect the tax. Those retailers should also watch for further developments in the Legislature, in the courts and from the Department of Revenue on this issue.

For additional information regarding these Alabama tax developments, please contact an attorney in the Firm's Tax Department.