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STATE OF ALABAMA

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Honorable Bud Solomon
Mayor
Town of Gantt
P.O. Box 817
Gantt, Alabama 36038

Municipalities -- Sales Tax --
Corporations -- Competitive Bid Law

1. Title and ownership of equipment purchased free of sales tax from the State Bid List by recognized volunteer fire department may not be transferred to an individual in exchange for a contribution of the purchase amount.
2. Member of recognized volunteer fire department may not purchase through such organization equipment for personal use from the State Bid List and avoid the payment of sales tax.

Dear Mayor Solomon:

This opinion is issued in response to your request for an opinion from the Attorney General. You point out that a volunteer fire department organized as a non-profit corporation, and other similar non-profit corporations, provide your town with fire protection and related services. These non-profit organizations are supported through contributions from various sources, including officers and members of the organizations. You pose the following questions regarding the purchase and ultimate ownership of equipment:

QUESTION 1

Can fire fighting or communications equipment on the State Bid list be purchased by an Alabama Non-Profit Corporation where no

state sales taxes were paid, subsequently receive a contribution of an equal amount from an individual, then transfer ownership of that same equipment to the individual who made the contribution?

QUESTION 2

Can an individual member of an Alabama Non-Profit Corporation legally purchase equipment through the Corporation for their personal use thereby taking advantage of the State Contract Bid price and escaping payment of State sales taxes as in the above case?

QUESTION 3

Does ownership of the equipment transfer to the individual upon separation from the organization?

FACTS AND ANALYSIS

The factual information provided, as well as the questions set out above, recognize that properly organized volunteer fire departments have been granted an exemption from the payment of taxes, including sales tax. Code of Alabama 1975, §40-9-13 provides in pertinent part as follows:

(a) All volunteer fire departments in this state, and all real and personal property of all volunteer fire departments in this state, . . . when such real and personal property shall be used as provided in section 40-9-12, are exempt from the payment of any and all state, county and municipal taxes, licenses, fees and charges of any nature whatsoever, including privilege or excise tax heretofore or hereafter levied by the State of Alabama or any county or municipality thereof.

(b) All volunteer fire departments in this state, . . . shall be subject to all the provisions of section 40-9-12, as are all other organizations named therein.

In recognition of this statutory exemption, the Alabama Department of Revenue has provided that such volunteer fire departments shall enjoy the exemption from payment of sales tax, along with the other charitable organizations and institutions named in Sales and Use Tax Rule 810-6-3-.07.05. The volunteer fire department which serves the Town of Gantt,

and the unnamed similar non-profit organizations referred to above, if entitled to the exemption, may purchase fire fighting and communications equipment from the State Bid List and avoid the payment of sales tax on such purchases.

It is clear that the sales tax exemption applies to the organization and not to any individual member or members of the organization. While an individual member may make a contribution in the form of money to his organization which may ultimately be used to purchase equipment, the individual contributor acquires no title nor interest in the equipment by virtue of such contribution.

Since the sales tax exemption applies to the qualifying non-profit corporation, any attempt by an individual to avoid the payment of sales tax in the purchase of equipment for personal use by either method set out in Questions 1 and 2 would not be appropriate. Since Questions 1 and 2 are answered in the negative for the foregoing reasons, it is unnecessary to answer Question 3.

CONCLUSION

Accordingly, it is the opinion of this office that an individual may not avoid the payment of sales tax on the purchase of equipment for personal use by going through an exempt non-profit corporation. An individual may not acquire title nor ownership of equipment purchased by such non-profit corporation by making a contribution of the purchase price of the equipment to the corporation.

I hope that this sufficiently answers your questions. If our office can be of further assistance, please do not hesitate to contact us.

Sincerely,

DON SIEGELMAN
Attorney General
By-



SAM CLENNEY, III
Assistant Attorney General

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