

OFFICE OF THE ATTORNEY GENERAL ⁹¹⁻⁰⁰¹⁹⁹



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STATE OF ALABAMA

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Honorable Marjorie Windham
City Clerk, City of Satsuma
P. O. Box 517
Satsuma, Alabama 36572-0517

Municipalities - Sales Tax

City may collect sales or use tax when title passes to purchaser within its taxing jurisdiction. Mere delivery may not provide sufficient nexus to require seller to collect city sales and use tax.

Dear Ms. Windham:

This opinion is issued in response to your request for an opinion from the Attorney General.

QUESTIONS

1. When a customer orders and pays for goods sold by a business within the jurisdiction of the city requesting that the same be delivered outside said jurisdiction, is sales tax due the city?
2. When a customer orders and pays for goods sold by a business outside the jurisdiction of the city and has such goods delivered by the seller into such jurisdiction, is sales tax due the city?
3. When a customer within the city's jurisdiction orders goods by telephone from a business outside said jurisdiction for delivery within said jurisdiction, with payment upon delivery, is sales tax due the city?

FACTS AND ANALYSIS

Your request for an Attorney General's opinion concerns basically three fact situations. In each of the situations presented, you have requested whether the City of Satsuma may collect sales tax on the transaction.

The first situation involves a florist shop located in Satsuma where a customer walks in off the street and pays for flowers and requests that those flowers be delivered outside the City of Satsuma. The next situation involves building materials or furniture that is ordered and paid for outside the City of Satsuma but is delivered in the City of Satsuma. The final situation involves a pizza parlor located in another town that receives a telephone order from a resident of the City of Satsuma. The pizza is delivered to the purchaser in the City of Satsuma and paid for at the time of delivery.

In your first question, involving the florist shop, there is no sales tax due the City of Satsuma. Where the flowers are sold to the customer and, as part of the sales agreement the florist is required to deliver the flowers outside the City of Satsuma, the transaction is exempt from the City of Satsuma sales tax. The title to the flowers does not pass to the purchaser until the point of delivery, even though the flowers are presented as a gift to a third party. The risk of loss remains in the seller until he completes his portion of the sales agreement by delivering the flowers to the third party. The Uniform Commercial Code as enacted by the Alabama Legislature addresses the passage of § 7-2-401, Code of Alabama 1975. Since title to the flowers does not pass until they are delivered, flowers delivered outside the taxing jurisdiction of the City of Satsuma would be exempt from the City of Satsuma sales tax.

In your second question, involving building materials or furniture, ordered and paid for in another town but delivered into the City of Satsuma, the City of Satsuma use tax would be due if the delivery is a condition of the sale. This is consistent with the situation involving the delivery of flowers by the florist. However, there may or may not be sufficient nexus with the City of Satsuma to require the seller to collect the tax.

In your third question, involving the pizza parlor, the pizza is ordered by telephone by a resident in Satsuma and the pizza parlor delivers the pizza to the Satsuma resident and is paid at the time of delivery. This situation is very similar to the one involving building materials or furniture delivered into Satsuma. The transaction is subject to the City of Satsuma sales

or use tax; but, in either case, it may not be possible to impose the duty to collect the tax upon the seller of the building materials or the pizza.

The United States Supreme Court has held that delivery of merchandise into a taxing jurisdiction by a seller does not provide a sufficient nexus with the taxing jurisdiction to impose the sales or use tax on the seller. However, if the seller has a physical presence, such as another store location or salesman soliciting orders within the taxing jurisdiction, the seller may be required to collect sales and use tax due the taxing jurisdiction. See Miller Brothers v. Maryland, 347 U.S. 340; Complete Auto Transit, Inc. v. Brady, 430 U.S. 274; National Bellas Hess v. Department of Revenue, 386 U.S. 753.

We note that, under § 11-51-90, Code of Alabama 1975, a city can impose a license for delivery of property within the city, although the transportation may begin outside of the city. Sanford Service Co. v. City of Andalusia, 55 So.2d 856 (1951). Again, there is a question of nexus, but the courts have applied a less strict test to the question of nexus when dealing with a business or privilege license than with sales or use tax.

CONCLUSION

The City may collect sales or use tax when title passes within its taxing jurisdiction. While mere delivery of merchandise into the city may or may not provide a sufficient nexus to require the seller to collect the city sales and use tax, it may provide a sufficient nexus for the imposition of a business license.

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

Sincerely,

JIMMY EVANS
Attorney General
By:


JAMES R. SOLOMON, JR.
Chief, Opinions Division