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STATE OF ALABAMA  
OFFICE OF THE ATTORNEY GENERAL

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Honorable RoDolphus Cotton  
Chairman, Fayette County Commission  
Post Office Box 866  
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Sales Tax – Use Tax – Mines and Mining -  
Coal Severance Tax

Pursuant to section 40-23-1(a)(5) of the Code of Alabama, the taxable event for sales tax is when the sales transaction is completed. The taxable event for use tax is when the act of transportation ends and the property comes to rest for use or consumption. Therefore, there is no discretion as to when to pay sales/use taxes – the taxable event controls.

Taxpayers holding a sales and use tax direct-pay permit can defer payment of tax on purchases until the purchases are withdrawn from inventory and it can be determined whether sales or use tax is due.

For purposes of administering state severance tax, severance occurs when coal is parted from the earth in which it has been imbedded, rather than when coal is ultimately removed from the earth out of the mouth of the mine.

Dear Mr. Cotton:

This opinion of the Attorney General is issued in response to your request on behalf of the Fayette County Commission.

**QUESTIONS**

1. Under Alabama tax law applicable to a taxpayer holding a Regulation "A" direct-pay permit,

when does the taxpayer have to pay sales/use taxes on purchased items (viz, at the time the transaction is completed or at the time the taxpayer places the purchased items into use)?

2. In the event the taxpayer knows at the time of purchase where the purchased items will be used, does the taxpayer have the discretion to pay the sales/use taxes based on either the place of receipt from vendors, temporary storage (relatively short periods of time before being placed into current use or for indefinite periods as spare parts), or ultimate use?

3. In the event the taxpayer does not know where the purchased items will be used, does the taxpayer have the discretion to pay the sales/use taxes based on either the place of receipt from vendors, temporary storage (for relatively short periods of time before being placed into current use or for indefinite periods as spare parts), or ultimate use?

4. If the taxpayer does not have this discretion, on what basis should taxpayer pay the taxes?

5. If items are used in both Tuscaloosa County and Fayette County, how should the taxes be allocated?

6. Is Tuscaloosa County solely entitled to the mineral severance tax for coal mined in Tuscaloosa County but retrieved and distributed through Portal #1 in Fayette County?

### **FACTS AND ANALYSIS**

The taxable event for sales tax is when the sales transaction is completed. See ALA. CODE § 40-23-1(a)(5) (2003). The taxable event for use tax is when the act of transportation ends and the property comes to rest for use or consumption. See *Paramount-Richards Theatres v. State*, 256 Ala. 515, 55 So. 2d 812 (Ala. 1951).

Whether the taxpayer knows at the time of purchase where the purchased items will be used, the taxpayer does not have the discretion to pay the sales/use tax based on either place of receipt from vendors, temporary storage, or ultimate use. The taxable event controls. See ALA. CODE § 40-23-1(a)(5) (2003); *Paramount-Richards*; ALA. ADMIN. CODE r. 810-6-5-.23, "Temporary Storage And

The Use Tax Law” (eff. Aug. 30, 2001). As the taxpayer does not have this discretion, the taxpayer should pay the taxes based on the taxable event. There are no provisions in the statute for allocation of taxes between counties. As outlined above, the taxable event controls.

The above being stated, however, the taxpayer is the holder of a sales and use tax direct-pay permit (formerly Regulation “A”). A direct-pay permit is issued when the Revenue Department finds that it is practically impossible, at the time of purchase, for “persons engaged in the business of mining, quarrying, compounding, or processing tangible personal property, or their vendors, to determine with any degree of certainty the applicability of sales or use tax upon purchases of tangible personal property . . .” ALA. ADMIN. CODE r. 810-6-4-.14 (eff. Oct. 20, 1998). Taxpayers holding a direct-pay permit are permitted to purchase tangible personal property without payment of taxes to the vendor, but must report and pay all sales and use tax directly to the Revenue Department. ALA. ADMIN. CODE r. 810-6-4-.14(a) (eff. Oct. 20, 1998). Such taxpayers, however, may defer payment of the tax until the purchases are withdrawn from inventory and it can be determined whether sales or use tax is due according to the above-stated rules of law, provided the conditions outlined in Rule 810-6-4-.14 are met.

For purposes of administering severance tax, the severance occurs when the coal is parted from the earth in which it has been imbedded rather than when it is ultimately removed out of the mouth of the mine. *See* Opinion to Honorable Grady Perry, Chairman, Walker County Commission, dated September 27, 1977 (File 84). Therefore, Tuscaloosa County, where the coal is mined, is solely entitled to the mineral severance tax, even though the coal is retrieved and distributed through Portal #1 in Fayette County.

### CONCLUSION

Based on the foregoing, the taxable event for sales tax is when the sales transaction is completed. The taxable event for use tax is when the act of transportation ends and the property comes to rest for use or consumption. The taxpayer should pay taxes based on the taxable event.

As the taxpayer holds a sales and use tax direct-pay permit, the taxpayer can defer payment of tax on purchases until the purchases are withdrawn from inventory and it can be determined, according to the above rules of law, whether sales or use tax is due.

For purposes of administering a severance tax, the severance occurs when coal is parted from the earth in which it has been imbedded rather than when the coal is ultimately removed from the earth out of the mouth of the mine.

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Tuscaloosa County, where the coal is mined, is solely entitled to the mineral severance tax.

I hope this opinion sufficiently answers your questions. If this Office can be of further assistance, please do not hesitate to contact Margaret J. McNeill, Legal Division, Alabama Department of Revenue.

Sincerely,

TROY KING  
Attorney General

By:

A handwritten signature in cursive script that reads "Brenda F. Smith".

BRENDA F. SMITH  
Chief, Opinions Division

TK/BFS

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