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ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 2015-001

TO: Requestor

FROM: Julie P. Magee, Commissioner of Revenue
Alabama Department of Revenue

DATE: June 12, 2015

RE: Application of Alabama Sales & Use Tax to Corporate Reorganization involving an Automotive Vehicle

In your letter dated January 19, 2015, you requested a Revenue Ruling regarding the application of Alabama Sales and Use Tax to certain transactions which you stated the Taxpayer was then contemplating.

FACTS

The facts as represented by the Requestor are as follows:[1]

Requestor is a provider of offshore drilling rigs and operates a fleet of such rigs. This fleet includes a number of mobile offshore drilling units and a Floating Production, Storage and Offtake vessel. Requestor contracts out the drilling rigs and vessel in its fleet to conduct oil and gas drilling operations throughout the world.

One Floating production, Storage and Offloading Unit ("FPSO") has been used by the Requestor in various parts of the world from 2005 through 2010. Since 2012, the FPSO has been "cold-stacked" in the state of Alabama. The Department interprets the phrase "cold-stacked" as meaning that the FPSO has been laid up in storage and not in use in oil and gas drilling operations. The Requestor states that the FPSO in question has never operated in Alabama state waters other than transport for storage purposes. The FPSO will continue to be cold-stacked in Alabama for an indefinite period.

Since 2005, the FPSO has been owned by Entity A, an entity in Foreign Country X classified as a partnership for United States federal income tax purposes. Entity A does not have any business operations in the State of Alabama. Entity A is owned 90% by Entity B, and 10% by Entity C. Both Entity B and Entity C are entities in Foreign Country X classified as corporations for United States federal income tax purposes. Entity B is wholly owned by Entity D. Entity D is wholly owned by Entity E, an entity in Foreign Country X that is disregarded for

[1] This revenue ruling, like all revenue rulings, is the Alabama Department of Revenue's interpretation of the law or regulations as applied to the facts and assertions contained in the request for the ruling. If any facts or conclusions asserted by the Requestor were misstated or misleading, or if facts that are relevant or material to a proper legal determination of this Revenue Ruling are omitted by the Requestor, this Revenue Ruling may be void.

United States federal income tax purposes. Entity E is wholly owned by Entity F, an entity in Foreign Country Y, classified as a corporation for United States federal income tax purposes. Entity F wholly owns Entity G, a Delaware entity classified as a corporation for United States federal income tax purposes.

As part of a corporate restructuring initiative, the ownership of the FPSO will transfer from Entity A to either a newly formed, Delaware-based limited liability company, or an existing Delaware-based limited liability company. Entity F plans for Entity A to either (1) distribute the FPSO to Entity B, who will then distribute it to Entity D, which will subsequently distribute the vessel to the foreign parent company Entity F, or (2) pass it to the foreign parent ("Entity F") via reverse mergers of the Foreign Country X entities, of which one surviving entity will be treated as a corporation for U.S. federal income tax purposes holding title to the FPSO. The foreign parent company ("Entity F") plans to subsequently contribute the vessel to their U.S. holding company either (a) in exchange for stock or (b) for no value. The vessel will then be placed under ownership of the newly formed Delaware LLC or an existing Delaware LLC.

ISSUES

You have asked for rulings on the following issues:

1. Do any of the transactions described above constitute a retail sale under Alabama sales tax law?

2. Assuming any of the transactions as described above constitute a retail sale under Alabama sales tax law, would that transaction qualify for the occasional sale exemption?

3. Assuming any of these transactions constitute a retail sale under Alabama sales tax law, and are not exempt under the occasional sale exemption, does the exemption for property exclusively used in the exploration or production of oil, gas, Sulphur, or other minerals in offshore federal waters apply to an FPSO vessel?

LAW AND ANALYSIS

The "Casual Sale" Exemption

The issues as presented presume that one may answer the question whether a sale is or is not a retail sale, and then, separately, answer a further question whether a given sale (presuming it is a retail sale) is an occasional or casual sale. In fact, this is one and the same inquiry.

As stated in Revenue Ruling 98-014, "[a]ll retail sales of tangible personal property within the State of Alabama are subject to the sales tax levied at Ala. Code § 40-23-2. However, sales for resale, or wholesale sales, are not subject to the sales tax. Ala. Code § 40-23-1(a)(9). In addition, casual or isolated sales of tangible personal property, with the exception of automobiles, by any person or company not engaged or continuing within this State in the business of selling such tangible personal property at retail, is not subject to sales tax. Sales and Use Tax Reg. § 810-6-1-.33. See also Ala. Code § 40-23-100, et seq."

Revenue Ruling 98-014 goes on to state "[a]ll casual or isolated sales of automotive vehicles, which are not made through a licensed dealer, are subject to the casual sales tax when the new owner registers the vehicles with the Probate Judge." In the context of Rev. Rul. 98-014, which was a corporate tax-free reorganization under I.R.C. § 332, "[t]he transfer of automotive vehicles constitutes an exchange of property whereby the automotive vehicles are transferred from Corporation 'A's' operating subsidiaries to Corporation 'A'. Therefore, under Alabama Sales Tax Law, the transfer of these motor vehicles constitutes a sale. The taxable measure is the consideration paid by Corporation 'A' to the Corporation 'A' operating subsidiaries for the automotive vehicles. Where the amount of the consideration is unknown, the taxable measure is the value of the automotive vehicles according to the tables used for ad valorem tax purposes."

There has been no substantive change in this area of the law since Rev. Rul. 98-014 was issued on December 14, 1998. Therefore, the Department is of the opinion that the taxing scheme described above continues to be the law respecting the sales and use tax consequences of a transfer of assets in a transaction or a series of transactions that constitute a tax-free reorganization or a contribution or distribution free of tax under the partnership income tax provisions.

That being the case, a key determination is whether the FPSO is a vehicle within the definition of an "automotive vehicle." The term "automotive vehicle" is defined by Ala. Code § 40-23-1(a)(12) as "[a] power shovel, dragline, crawler, crawler crane, ditcher, or any similar machine which is self-propelled, in addition to self-propelled machines which are used primarily as instruments of conveyance." The Requestor has informed the Department that the FPSO has permanently installed engines, and travels under its own power. It is therefore a "self-propelled machine." Further, the purpose of the FPSO is to carry its specialized equipment from shore to the place where it is used in drilling operations. Therefore, it is an "instrument of conveyance." Therefore, the Department is of the opinion that the FPSO is within the definition of "automotive vehicle" described above.

However, the taxation of casual sales of automotive vehicles, motorboats, truck trailers and the like is addressed by Article 3 of Chapter 23, Title 40 (Ala. Code § 40-23-100 through and including § 40-23-111). In addition to motor vehicles, Article 3 also taxes the sale of both automotive vehicles and "motorboats." A "motorboat," for this purpose, is defined by Ala. Code § 40-23-100(3) as "[a] boat with one or more built-in motors . . . and which motor or motors are controlled with remote controls built on or into the hull of the boat."

Again, the Requestor states that the FPSO is self-propelled by permanently installed motors. It therefore also qualifies as a "motorboat" for purposes of Article 3. The levy statute of Article 3 is Ala. Code § 40-23-101, which states "[t]here is hereby levied and shall be collected as herein provided a sales tax upon every person, firm, or corporation purchasing within this state, other than at wholesale, any automotive vehicle, motorboat . . . required to be registered or licensed with the judge of probate of any county in this state from any person, firm or corporation that is not a licensed dealer engaged in selling automotive vehicles, motorboats . . . in an amount equal to two percent of the purchase price."

The Department's understanding is that the FPSO, when it is used, is used exclusively in either international waters or else federal waters, but in any case outside the territorial waters of the State of Alabama. That being the case, there is no requirement that the FPSO is "required to

be registered or licensed with the judge of probate of any county in this state." That being the case, the tax imposed by Ala. Code § 40-23-101 does not apply. Similar logic applies to the use tax found in Ala. Code § 40-23-102.

The "Oil Production Equipment" Exemption

A specific exemption from Alabama's sales tax appears in Ala. Code § 40-23-4(a)(43)b, which states in pertinent part: "[t]here are exempted from the provisions of this division and from the computation of the amount of the tax levied, assessed, or payable under this division the following: . . . [t]he gross proceeds of the sale or sales of . . . [t]angible personal property exclusively used for the exploration for or production of oil, gas, sulphur, or other minerals in offshore federal waters." The equivalent use tax exemption is found at Ala. Code § 40-23-62(35)b.

There is no doubt that the FPSO constitutes tangible personal property. Further, the representations of fact given by the Requestor show that the FPSO is "exclusively used for the exploration for or production of oil, gas, sulphur, or other minerals." The only question left is whether the FPSO is used in "offshore federal waters."

Read strictly, this provision might seem to restrict the exception only to vessels that are used both (a) outside the territorial waters of the State of Alabama, and yet (b) within the territorial waters of the United States. As stated above, the FPSO in question was used for a significant amount of time in international waters, or in the territorial waters of foreign countries. The Department does not believe this strict interpretation to be the intent of the statute. Rather, the exception applies to any personal property used in exploration or production of oil, gas, and so forth in waters outside the territorial waters of the State of Alabama, whether federal, international, or in a foreign country.

Therefore, the FPSO qualifies for the exemptions cited above, and would be exempt from Alabama Sales and Use Tax, even if it were to be liable for the tax otherwise.

HOLDING

1. The transfer of ownership of the FPSO is a casual sale. However, because the FPSO is an automotive vehicle and a motorboat, Sales and Use Tax Reg. § 810-6-1-.33(3) would apply the casual sales tax on automotive vehicles if the requirements of that regulation and the associated statute were met. Nevertheless, upon completion of the transactions described above, the transfer of ownership of the FPSO will be exempt from Alabama Sales and Use Tax, because the FPSO is not a vehicle required to be registered or licensed with an Alabama judge of probate, which is a further requirement of Ala. Code § 40-23-100 *et seq.*

2. In addition, the FPSO is "tangible personal property exclusively used for the production of oil, gas, Sulphur, or other minerals in offshore federal waters." Therefore, even ignoring the holding reached above, it nevertheless would be exempt from Alabama Sales and Use Tax upon the consummation of the transactions proposed.

JULIE P. MAGEE, Commissioner,
Alabama Department of Revenue