

PUBLICATION

Spotlight on Alabama: Supreme Court Affirms Limitations of Municipal Business License Tax on Out-of-State Suppliers

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The Code of Alabama grants municipalities certain powers related to the imposition of business license taxes on trades, businesses, or vocations which may be engaged in or carried on in the municipality. This authority is used by many Alabama municipalities to generate local revenue. The recent order of the Alabama Supreme Court, issued without opinion, in *Thomas v. Elbow River Marketing Ltd. Partnership*, No.1160678 (Ala. Dec. 8, 2017), affirming the decision of the Circuit Court of Jefferson County (*Elbow River Marketing Limited Partnership v. Thomas*, CV-2014-000624.00), further defines the limitations on this taxing power in reviewing a final assessment made by the City of Birmingham against a Canadian supplier of hydrocarbon products to customers in the city. The Supreme Court found the supplier did not engage in a trade, occupation, or business within the City of Birmingham as is required both by state law and the city's business license code. That holding was based on these facts regarding the supplier and the transactions, which were the basis of the assessment, that the supplier:

1. was headquartered and conducted its operations in Canada;
2. never had any business location or physical address in Alabama;
3. never had any employees or agents based in or conducting operations in Alabama;
4. did not solicit sales or conduct sales or advertising in the city;
5. did not itself deliver any product to the customer or participate in the delivery process; instead, the product was delivered by third-party rail or trucking carriers (even though in certain cases the title to the product remained with the supplier until delivery to the customer was complete);
6. no employees of the supplier came to the city to facilitate any of the sales transactions or deliveries; instead communications were conducted by telephone conversations and e-mail correspondence; and
7. when the supplier purchased the product from a third-party supplier in connection with a "purchase-delivery sale" or "drop shipment sale" to the customer, the third-party suppliers all had their principal offices outside Alabama.

Based on the foregoing findings of fact, the Circuit Court held that the Canadian-based supplier did not engage in a trade, occupation, or business within the City of Birmingham, and ordered the City of Birmingham to withdraw its final assessment and refund the \$140,332 paid by the supplier to perfect its appeal of the final assessment (plus interest from the date the payment was tendered to the city).

The significance of this case, as stated above, is that this grant of taxing authority is used by municipalities throughout the State of Alabama to generate local revenue. Particular targets in that effort are foreign businesses that sell and deliver product to customers located within the city. This case provides further definition to the limitations of that taxing authority. The Circuit Court concludes its opinion, stating: "And Alabama law makes clear that a product seller that does nothing more than having its merchandise delivered into a municipality by means of a common carrier cannot be subjected to business license tax." It is worth noting that amendments made to the statute granting this taxing authority in 2006 included the enactment of a delivery license statute that governs the extent to which non-resident sellers who deliver their own products into a municipality may be subject to business license tax. The statute provides that even sellers who

themselves deliver products within a municipality may not be subjected to business license tax if the amount of merchandise delivered falls under certain thresholds. Those sellers instead must be permitted to purchase a delivery license at a limited cost with that municipality.

If you have any questions related to the content of this alert, please reach out to [Ross Cohen](#), or any member of Baker Donelson's [Tax Group](#).