



## AlaFile E-Notice

03-CV-2016-900562.00

Judge: JAMES H ANDERSON

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# NOTICE OF ELECTRONIC FILING

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IN THE CIRCUIT COURT OF MONTGOMERY COUNTY, ALABAMA

SCHOLASTIC BOOK CLUBS INC. V. HON JULIE P MAGEE/COMM OF REV/ST OF AL D  
03-CV-2016-900562.00

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MONTGOMERY, AL, 36104

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**IN THE CIRCUIT COURT OF  
MONTGOMERY COUNTY, ALABAMA**

**SCHOLASTIC BOOK CLUBS, INC.,** )  
 )  
**Plaintiff/Appellant,** )  
 )  
**v.** )  
 )  
**THE STATE OF ALABAMA** )  
**DEPARTMENT OF REVENUE, and** )  
 )  
**JULIE P. MAGEE, IN HER** )  
**OFFICIAL CAPACITY AS** )  
**COMMISSIONER OF THE** )  
**DEPARTMENT OF REVENUE FOR** )  
**THE STATE OF ALABAMA,** )  
 )  
**Defendants/Appellees.** )

**CASE NO. CV-2016-900562.00**

**ORDER AND FINAL JUDGMENT**

This matter is before this Court as the result of a timely appeal filed by the plaintiff/appellant, Scholastic Books Clubs, Inc. ("SBC"), under Ala. Code § 40-2B-2(m). SBC appealed from the Final Order of the Alabama Tax Tribunal in Docket No. S. 14-374, entered on March 25, 2016, which upheld the final assessment entered by the defendant/appellee, Alabama Department of Revenue (the "Department"), of Alabama seller's use taxes and interest against SBC. The material facts are not in dispute; either SBC or the Department is entitled to judgment as a matter of law. Based upon the pleadings, briefs and evidentiary materials submitted by the parties (including the Joint Stipulation of Facts and affidavits of three Alabama school teachers) and the arguments presented at the bench trial, the Court is of the opinion that SBC is not required to collect Alabama's seller's use tax and thus the final assessment against SBC is contrary to the law and void. The court orders and enters its final judgment as follows:

1. The primary dispute between the parties relates to whether SBC is required to collect and remit Alabama's seller's use tax under Ala. Code § 40-23-68(b). For the reasons set forth in SBC's Brief and Reply Brief, this Court finds that SBC's contacts with Alabama are not included within any of the enumerated categories under Ala. Code § 40-23-68(b) and thus it has no obligation to collect and remit use tax on its sales to Alabama school children, teachers, and parents. Specifically, this Court finds that the Alabama school teachers and parent educators were not acting on behalf of or under the authority of SBC and were not retained under contract by SBC. Rather, the Alabama school teachers and parent educators were acting on behalf of their students in helping them place orders.

2. The Tax Tribunal also found that the activities of teachers and parent educators did not fall within the statutory definition of a sales agent or representative under Ala. Code § 40-23-68(b)(3) "because the Alabama teachers were not employed by or under contract with [SBC] during the subject period." Final Order, p. 5. Despite this finding, the Tribunal erroneously concluded that the actions of teachers (and parent educators) constituted "other activity" under Ala. Code § 40-23-68(b)(9), the catchall clause, that was sufficient to pass constitutional muster. The Tribunal's interpretation does not comport with Alabama's longstanding rules of statutory construction because such interpretation ignores the plain language of the (b)(9) provision, which specifically only applies to "any other contact" not described elsewhere in the statute (including Ala. Code § 40-23-68(b)(3) that does not apply to SBC), and would thus render the remainder of the statute meaningless. Further, the Tribunal's interpretation would nullify the 1991 amendment to Ala. Code § 40-23-68(b) to expressly require a contract for in-state representatives in order to trigger an obligation to collect the seller's use tax.

3. This Court also notes that if the Department's and the Tribunal's interpretation of Ala. Code § 40-23-68(b) were accepted, it would present serious issues under the United States Constitution, specifically the Due Process and Commerce Clauses, with respect to the imposition of Alabama seller's use tax against SBC. The Court finds that there is no evidence of schoolteachers or parent educators engaging in any activities directed by, or conducted on behalf of, SBC, nor can teachers or parent education be equated with the sales force in *Scripto v. Carson*, 362 U.S. 207, 211 (1960), the employees and engineers in *Tyler Pipe Industries, Inc. v. Washington Dep't of Revenue*, 483 U.S. 232, 250 (1987), or the dedicated, full-time employee in *Standard Pressed Steel Co. v. Washington Dep't of Revenue*, 419 U.S. 560, 561 (1975). Accordingly, because SBC does not have the requisite physical presence in Alabama required under the "substantial nexus" test established by the United States Supreme Court, the Department's final assessment would be unconstitutional as applied to SBC. Given the Court's resolution of these issues, it need not address the remaining arguments contained in SBC's notice of appeal.

For the reasons set forth herein, the Court finds that the final assessment that is the subject of SBC's appeal in this action is contrary to law and void, and the Department is therefore directed to cancel the final assessment.

This order disposes of all claims in this action, and the Court enters this order as its final judgment. Costs are taxed to the defendants. If after expiration of the time to appeal, no party has filed a notice of appeal from this order, the clerk is directed to release the supersedeas bond filed by SBC and to return the same to its counsel of record.

DONE and ORDERED this 18<sup>th</sup> day of Aug, 2017.

Wm A. Stanley  
CIRCUIT JUDGE