

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

v.

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DOCKET NOS. INC. 94-285
INC. 94-286
INC. 94-287

SENECA GP, INC.
Post Office Box 2563
Birmingham, Alabama 35202,

Taxpayer.

FINAL ORDER
DENYING APPLICATION FOR REHEARING

A Final Order was entered in this case on June 20, 1995. The Department timely applied for a rehearing on July 5, 1995. The application is denied for the reasons stated below.

To begin, the Department disagrees with the Final Order's finding that the interest income in issue is business income, and thus must be apportioned to Alabama. However, the Department argues that if that is the case, then only the gross receipts (sales) factor should be used to apportion income to Alabama because the Taxpayer had no payroll or tangible property in Alabama during the subject period. I disagree.

The standard three factor apportionment formula of sales, property and payroll is relied on by Alabama and most other states. See generally, Container Corp. v. Franchise Tax Board, 463 U.S. 159 (1983). Use of the three factor formula is also proscribed by Department Regs. 810-3-31-.02(5), subsections (a), (b), and (c), and 810-27-1-4-.09 through .17.

Navistar Financial Corp. v. Department of Revenue, Admin. Law Docket No. Inc. 93-249, decided September 30, 1994, is not on point. In that case, Navistar attempted to

use the special gross receipts factor formula set out in Reg. 810-3-31-.02(5)(c)9(xii)(VII)IV. Use of that special formula was rejected by the Administrative Law Division, and Navistar was instead required to use the standard three factor formula. Consequently, Navistar supports the Taxpayer's use of the three factor formula, not the use of a single gross receipts factor as argued by the Department.

The Department also cannot remove or eliminate a factor from an otherwise appropriate apportionment formula because the factor is zero. All appropriate factors must be employed. See, Dept. Reg. 810-2-3-13 and State v. Aristech Chemical Corp., Admin. Law Docket No. F. 92-350, decided November 16, 1993.

The Department next argues that neither Rev. Proc. 72-13 nor the Internal Revenue Code requires a corporation to maintain a minimum net worth. I agree that a minimum net worth is not required by law, but the Department's argument misses the point.

Rev. Proc. 72-13 simply provides guidance as to the minimum net worth necessary for a limited partnership with a corporate general partner to be treated by the IRS for tax purposes as a partnership rather than a corporation. Sonat, although not required to issue the note to the Taxpayer in this case, nonetheless did so for the legitimate business purpose of complying with the guidelines set out in Rev. Proc. 72-13.

Finally, the Department cites the net worth maintenance agreement between Sonat and the Taxpayer in support of its case. However, that agreement has no bearing or relevance to the issue in dispute.

The above considered, the Department's application for rehearing is denied. The Final Order as previously entered is affirmed.

This Final Order Denying Application for Rehearing may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered August 23, 1995.

BILL THOMPSON

Chief Administrative Law Judge