NORTH AMERICAN VAN LINES, INC. Post Office Box 988 Fort Wayne, Indiana 46810-0988,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
Taxpayer,	§	DOCKET NO. F. 95-473
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER

The Revenue Department assessed franchise tax against North American Van Lines, Inc. ("North American") for the years 1988 through 1993. North American appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on February 20, 1996. Roy Crawford represented North American. Assistant Counsel Jeff Patterson represented the Department.

The issues are:

(1) Was North American engaged exclusively in interstate commerce during the subject years;

(2) If so, is a foreign corporation engaged exclusively in interstate commerce subject to Alabama franchise tax;

(3) Was North American "doing business" in Alabama for franchise tax purposes during the subject years;

(4) If North American was subject to Alabama franchise tax and was doing business in Alabama, should North American's capital employed in Alabama be limited to the value of its property located in Alabama in accordance with Code of Ala. 1975, §40-14-41(c). Specifically, is North American an organization "whose accounts and records are kept according to rules prescribed by a regulatory

agency or instrumentality of the United States" within the context of §40-14-41(c);

(5) In computing its capital base, should North American be entitled to deduct or net its intercompany receivables against its intercompany payables; and,

(6) In computing its apportionment factors, should "log miles" or "revenue miles" be used. Log miles are total miles traveled by North American's trucks. Revenue miles are miles traveled while the trucks are actually earning revenue.

The facts are undisputed.

North American is headquartered in Fort Wayne, Indiana and is engaged exclusively in the interstate hauling of goods throughout the United States. North American operates through approximately 800 contract agents, 14 of which are located in Alabama.

A typical transaction in Alabama evolves as follows: A customer contacts a North American agent in Alabama. The parties negotiate a contract, which must be approved by North American in Fort Wayne. After the contract is approved, the contracting agent loads and transports the goods, and unloads the goods at the destination point.

If the agent cannot complete the move, North American dispatches another agent to complete the move through its central dispatching system in Fort Wayne. North American reimburses the customer for any damaged goods. North American bills and collects from the customer after the move is completed, and also pays its agent the agreed amount.

North American employs two salesmen and two mechanics in

Alabama. The salesmen conduct marketing and sales activities for North American in Alabama and surrounding states. They drive automobiles owned by North American, and Alabama income tax is withheld from their salaries. The two mechanics, although employed by North American, actually work in Birmingham for North American's parent corporation, Norfolk Southern, Inc.

North American owns the trailers used by its agents to make the interstate moves. The agents own the tractors used to pull the trailers.

North American also leases approximately 10 to 30 of its older trailers to its agents in Alabama and elsewhere. The agents use those leased trailers exclusively for intrastate purposes unrelated to North American's interstate business.

The Federal Interstate Commerce Commission ("ICC") granted certificates of public convenience and necessity to North American in 1950. North American maintained its accounts and records during the subject years as prescribed by the ICC, specifically, the Uniform System of Accounts for Motor Carriers prescribed in 12 CFR ¶ 1207.

North American has never qualified with the Alabama Secretary of State to do business in Alabama, and also has never filed Alabama franchise tax returns.

The Department audited North American and determined that North American had nexus with and was doing business in Alabama.

The Department accordingly computed and assessed the franchise tax in issue.

The Department included intercompany payables owed by North American to its parent in North American's capital base. The Department refused, however, to allow North American to deduct or net against the payables various intercompany receivables owed to it by a subsidiary corporation.

The Department used three factors in apportioning North American's capital to Alabama - payroll, mileage, and sales. In computing the factors, the Department used North American's "log miles" instead of "revenue miles."

Issue 1 - Was North American engaged exclusively in interstate commerce during the years in question?

North American hauls goods exclusively between Alabama and other states. That activity clearly involves interstate commerce. North American has employees, agents, and property in Alabama and clearly transacts business in Alabama. But the agents, employees, and property in Alabama are all integrally and necessarily involved or used in North American's interstate moving business. Consequently, North American is primarily engaged exclusively in interstate commerce in Alabama. See generally, State v. Plantation Pipe Line Co., 89 So.2d 549 (1956) and State v. Transcontinental Gas Pipe Line Corp., 123 So.2d 172 (1960) (Foreign corporations were engaged exclusively in interstate commerce in Alabama because their employees and property in Alabama were a necessary and

integral part of their interstate business activity.)

North American also leases some of its older trailers to its agents in Alabama. But those leased trailers are used by the agents solely for intrastate purposes unrelated to North American's primary interstate moving business. The leasing of the trailers is incidental to North American's primary business and does not constitute a separate "doing business" in Alabama for Alabama franchise tax purposes. State v. City Stores Company, 171 So.2d 121 (Ala. 1965) (An activity incidental to a corporation's primary business activity does not constitute doing business for Alabama franchise tax purposes.)

Issue 2 - Is a foreign corporation engaged exclusively in interstate commerce subject to Alabama's franchise tax?

North American next argues that a foreign corporation engaged exclusively in interstate commerce in Alabama cannot be subjected to Alabama's franchise tax, citing Plantation Pipe Line and Transcontinental Gas. I agree.

The Alabama Supreme Court held in Plantation Pipe Line as follows:

> The Alabama franchise tax on foreign corporations is not applicable to foreign corporations doing an exclusively interstate business in Alabama.
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> * * *
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> A study of the history of the franchise tax, . . . and the constitutional provision under which it was levied and the decisions of this court demonstrates to us that the franchise tax on foreign corporations is only applicable to foreign corporations actually doing an intrastate business in this State.

* * *

> These sections (§232 of the Constitution) relate to a foreign corporation that "does business" in Alabama or to foreign corporations that "do any business in this state". The decisions of this Court hold that these words are construed as holding that a foreign corporation doing an exclusively interstate business in Alabama does not "do any business in this state" and that the constitutional provision is not applicable to such a corporation. This Court well stated the rule in the Hurst case supra, when it said, "The constitutional and statutory provisions under consideration were not intended and cannot be made to interfere with, or to apply to, interstate commerce." (cites omitted)
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> * * *
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> We are satisfied that the franchise tax is only applicable to foreign corporations doing intrastate business in Alabama.

Plantation Pipe Line, at pages 560 - 563.

The Court in Plantation Pipe Line also held that a tax on interstate commerce also violated the United States Constitution, citing Spector Motor Service v. O'Connor, 340 U.S. 602, 71 S.Ct. 508 (1951). But that finding was in addition to the Court's primary holding concerning §232 of the Alabama Constitution. Justice Lawson, in a concurring opinion, stated that it was unnecessary to decide the federal constitutional issue because he agreed that the Alabama Constitution and statutes prohibited Alabama from taxing an interstate activity. Plantation Pipe Line, at page 569.

The Administrative Law Division stated in a prior case that

Plantation Pipe Line and Transcontinental Gas were no longer valid because Spector Motor Service was overturned in Complete Auto Transit v. Brady, 430 U.S. 274, 97 S.Ct. 1076 (1977). See, State v. Union Tank Car, Admin. Law Docket F. 90-154, decided April 23, 1992. That statement is wrong because I incorrectly understood that Plantation Pipe Line was decided solely on federal Commerce Clause grounds as set out in Spector Motor Service. Consequently, because Spector Motor Service was later overturned by Complete Auto Transit, I reasoned that Plantation Pipe Line and Transcontinental Gas also were no longer valid.

But as discussed above, the Alabama Supreme Court's holding in Plantation Pipe Line was based primarily on its interpretation of §232 of the Alabama Constitution, not the Commerce Clause.

Plantation Pipe Line has not been reversed or amended, at least that part concerning §232 of the Alabama Constitution. Consequently, because North American was engaged exclusively in interstate commerce in Alabama during the subject years, it was not doing business for franchise tax purposes under §232 of the Alabama Constitution. The final assessment in issue is dismissed.

Although bound by Plantation Pipe Line, I do not understand the Court's interpretation of §232 that a "foreign corporation doing an exclusively interstate business in Alabama does not 'do any business in this state' and that the constitutional provision (§232) is not applicable to such a corporation." Plantation Pipe

Line, at page 561.

Rather, a foreign corporation is "doing business" in Alabama if it is engaged in its primary business activity in Alabama. State v. City Stores Company, supra. The fact that the Alabama activity involves interstate commerce does not cause the corporation not to be doing business in the State. I find nothing in §232 indicating that engaging in an interstate business activity in Alabama and "doing business" in Alabama for franchise tax purposes are mutually exclusive concepts. Rather, Alabama may tax a corporation engaged exclusively in interstate commerce in Alabama if the corporation (1) is engaged in its primary business activity in Alabama, i.e. is doing business in Alabama, and (2) the four-pronged Commerce Clause test set out in Complete Auto Transit is satisfied.[1] But as stated, Plantation Pipe Line has not been overturned. Consequently, North American, as a foreign corporation engaged exclusively in an interstate commerce in Alabama, is not subject to Alabama franchise tax.

The remaining issues are pretermitted by the above holding.

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

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[1]The United States Supreme Court held in Complete Auto Transit, at page 1079, that a state may tax a corporation engaged in interstate commerce if "the tax is applied to an activity with a substantial nexus with the taxing state, is fairly apportioned, does not discriminate against interstate commerce, and is fairly related to the services provided by the State."

Entered July 19, 1996.

BILL THOMPSON
Chief Administrative Law Judge