

VULCAN MATERIALS COMPANY
P.O. Box 530187
Birmingham, AL 35253-0187,

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

DOCKET NO. CORP. 98-157

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

THIRD PRELIMINARY ORDER
SETTING HEARING ON TAXPAYER-S APPLICATION FOR REHEARING

One of the primary issues in this case was whether dividends received by the Taxpayer from VIL, ACE, and Tradeco should be classified as apportionable business income or allocable non-business income. The parties agreed that if the dividends were determined to be business income, then the Taxpayer-s investment in those companies would be Abusiness assets@ that should be removed from the numerator of the non-business interest expense deduction ratio, and vice versa. The Department had initially included those investments, and the Taxpayer-s investment in other subsidiaries, as non-business assets in the numerator.¹

The Administrative Law Division ruled that the VIL, ACE, and Tradeco dividends were business income. Consequently, in recalculating the Taxpayer-s liability, the Department removed those business assets from the numerator of the interest deduction ratio. However, the Department also excluded the other subsidiaries from the numerator of the ratio. The Department-s rationale is that those other subsidiaries are Anot distinguishable from ACE, Tradeco, and Vulcan International in their relation to Vulcan.@ Department-s February 14, 2000 letter, at p. 1.

¹The other subsidiaries are Reed Crushed Stone, Central States Materials, RECO Transportation, Vulcan Lands, Inc., BRT Terminal, Vulcan Gulf Coast Materials, Statewide Transport, and Vulcan Materials Deutschland.

There is no evidence in the record that the Department's assertion is factually correct. In fact, none of the Taxpayer's subsidiaries other than VIL were discussed at the February 2, 1999 hearing.² Consequently, there is no evidence that the Taxpayer's investment in those other subsidiaries constituted business or non-business assets for purposes of the interest deduction ratio.

Whether the Taxpayer's investment in the other subsidiaries constituted non-business assets, and thus should be included in the numerator of the interest deduction ratio, is obviously relevant to the Taxpayer's liability for the subject years. The goal of the Administrative Law Division is to find the correct amount owed by a taxpayer, if any. Code of Ala. 1975, ' 40-2A-7(5)d.1. The procedures that govern the Administrative Law Division must be construed to provide for the fair, efficient, and complete resolution of all matters in dispute. Code of Ala. 1975, ' 40-2A-9(a). Because the above issue has a direct bearing on the Taxpayer's liability for the subject years, it must be decided. The fact that the issue was not raised at the February 2, 1999 hearing does not prohibit it from being addressed now. Otherwise, one of the parties would be required to raise the issue in a *de novo* appeal to circuit court.

A hearing is scheduled for 9:00 a.m., May 10, 2000 in Room 4118, Gordon Persons Building, 50 North Ripley, Montgomery, Alabama. The purpose of the hearing is to obtain

²ACE and Tradeco were not subsidiaries of the Taxpayer. The Taxpayer only purchased stock in those corporations for a business related purpose.

evidence relating to the above discussed issue.

The Department initially included the above subsidiaries as non-business assets in the numerator of the non-business interest deduction ratio. Consequently, the *prima facie* correctness of a final assessment on appeal established at Code of Ala. 1975, ' 40-2A-7(b)(5)c. does not apply. The Department is, however, authorized to subpoena testimony or other records from the Taxpayer relevant to the issue. Hopefully, that will not be necessary. The Taxpayer is encouraged to cooperate with the Department and voluntarily provide all information relevant to the issue before the May 10 hearing. The parties should notify the Administrative Law Division if they need more time to review the issue. If so, the May 10 hearing will be rescheduled accordingly.

Entered March 9, 2000.

BILL THOMPSON
Chief Administrative Law Judge

BT: dr

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