KNAUF FIBER GLASS GMBH, INC. 1 KNAUF DRIVE SHELBYVILLE, IN 46176-1420,	§ §	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
Taxpayer,	§	DOCKET NO. CORP. 05-970
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

OPINION AND PRELIMINARY ORDER

Knauf Fiber Glass GMBH, Inc. ("Taxpayer") appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. concerning a final assessment of 1998 through 2000 corporate income tax. The case was scheduled to be heard on March 29, 2006. Before the hearing, the Taxpayer moved to have the 1998 tax year deleted from the final assessment because it was not timely assessed. The Administrative Law Division agreed to decide the statute of limitations issue before the scheduled hearing because if 1998 was not timely assessed, the parties would not be required to prepare for the substantive issues relating to that year. The parties briefed the issue, and a Preliminary Order was entered on March 6, 2006 holding that the 1998 tax year was not timely assessed, and should be deleted from the final assessment.

The hearing concerning the 1999 and 2000 tax years was conducted as scheduled on March 29, 2006. Chris Grissom and Matt Houser represented the Taxpayer. Assistant Counsel Jeff Patterson represented the Department.

ISSUES

(1) Should certain sales by the Taxpayer to customers outside of Alabama during the subject years be "thrown back" to Alabama, and thus included as Alabama sales in the numerator of the sales factor used to apportion the Taxpayer's income to Alabama. See

generally, Code of Ala. 1975, §40-27-1, Art. IV. ¶15 and ¶16;

(2) Is the Taxpayer entitled to an interest deduction for certain lease payments it made to the Chambers County, Alabama Industrial Development Board ("IDB") during the subject years. See generally, Code of Ala. 1975, §40-18-35(a)(2), as that section read during the years in issue.

FACTS

The Taxpayer manufactures and sells fiberglass insulation products. It is headquartered in Indiana, and during the years in issue operated plants in California, Indiana, and Chambers County, Alabama.

The Alabama plant was constructed in the late 1980s by the Chambers County, Alabama IDB, in conjunction with the Taxpayer. The Alabama Legislature authorized county IDBs to promote industrial development in Alabama by allowing certain tax incentives for businesses that construct non-retail facilities in Alabama. See generally, Code of Ala. 1975, §11-20-1, et seq; *McDonald's Corp. v. DeVenney*, 415 So.2d 1075 (Ala. 1982). Toward that purpose, Code of Ala. 1975, §11-20-47 exempts county IDBs from Alabama taxation, including the interest paid on bonds issued by IDBs.

The Chambers County IDB issued industrial development bonds to finance construction of the plant. The Taxpayer purchased the 30 year bonds, which totaled $54,851,200. The IDB used that money, with the Taxpayer as its purchasing agent, to construct and equip the facility. The IDB was required to pay the Taxpayer annual interest on the bonds totaling $4,525,224. The IDB in turn leased the facility to the Taxpayer, which required the Taxpayer to pay the IDB the same $4,525,224 in annual rent. In effect, the

interest paid by the IDB to the Taxpayer and the rent paid by the Taxpayer to the IDB in the subject years was a wash.

The lease requires the Taxpayer to maintain the facility, pay all property and other taxes on the facility, and maintain insurance on the facility. The Taxpayer has the option to purchase the facility at the end of the lease term (2017) for $1,000. The parties further agreed that the Taxpayer could claim depreciation and the other tax benefits relating to the facility, "and that for such purposes the Lease will be deemed to be a financing of any part of the Project acquired with the proceeds of the Bonds." Taxpayer Ex. 30, §12.4.

The Taxpayer sold the fiberglass products manufactured at the Alabama facility during the years in issue to customers in Alabama and various other states. On its 1999 and 2000 Alabama income tax returns, the Taxpayer included the sales to its Alabama customers in the numerator of its sales factor. It also "threw back" and included in the numerator those sales in other states in which it determined that it was not subject to tax.[1]

Alabama's corporate income tax return begins with federal taxable income on line 1. The federal taxable income amounts reported by the Taxpayer on its 1999 and 2000 Alabama returns included the IDB interest income received by the Taxpayer in those years. The amounts also reflected an interest deduction for the like amounts of "rent" paid by the Taxpayer to the IDB in those years.

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[1] As discussed below, Alabama law requires that if a corporation makes sales from Alabama into another state, but the corporation is not subject to any one of four types of taxes in the state, the sales must be thrown back and included as Alabama sales in the corporation's Alabama sales factor numerator. See generally, Code of Ala. 1975, §40-27-1, Art. IV. ¶3 and ¶16.

In computing its Alabama taxable income in the subject years, the Taxpayer removed the IDB interest income as a reconciliation adjustment to the line 1 federal taxable income amount because such interest, while subject to federal tax, is exempt from Alabama tax. The Taxpayer made no reconciliation adjustment concerning the IDB interest deduction. The Taxpayer thus deducted the IDB-related interest expense that flowed through to the federal taxable income amount on line 1, but did not include the interest income received from the IDB as taxable income.

The Department audited the Taxpayer's 1999 and 2000 returns and made the two adjustments in issue. First, it determined that sales in other states not included by the Taxpayer in its Alabama sales numerator should also be "thrown back" to Alabama because the Taxpayer was not subject to tax in those states. Second, it disallowed, i.e., added back as an adjustment to the line 1 federal taxable income amount, the interest deductions claimed by the Taxpayer for the rent amounts paid to the IDB pursuant to the lease agreement.

ANALYSIS

Issue (1). The Throwback Sales.

Alabama has adopted the Multistate Tax Compact, Code of Ala. 1975, §40-27-1 et seq., which requires multistate corporations to apportion their business income to Alabama using the three factor formula of payroll, property, and sales. Section 40-27-1, Art. IV. ¶ 15 provides that the sales factor numerator "is the total sales of the taxpayer in this state during the tax period, . . ." Section 40-27-1, Art. IV. ¶16(b)(2) specifies that sales are in this state if the property is shipped from the state and "the taxpayer is not taxable in the state of

the purchaser." That provision is commonly referred to as the "throwback" rule. See generally, *White v. Kimberly-Clark Corp.*, 503 So.2d 296 (Ala. Civ. App. 1986). Section 40-27-1, Art. IV. ¶ 3 provides that – ". . . a taxpayer is taxable in another state if (1) in that state he or she or it is subject to a net income tax, a franchise tax measured by net income, a franchise tax for the privilege of doing business, or a corporate stock tax, or (2) that state has jurisdiction to subject the taxpayer to a net income tax regardless of whether, in fact, the state does or does not." See also, Dept. Reg. 810-27-1-4-.03(a)(1).

The Department argues that the Taxpayer was not subject to tax in Michigan, Mississippi, Tennessee, Washington, and New Jersey (for 2000 only) during the years in issue, and consequently, that the Taxpayer's sales in those states should be thrown back and included in the Taxpayer's Alabama sales factor numerator.[2]

To begin, to be "subject to" one of the types of taxes enumerated in §40-27-1, Art. IV. ¶3, a taxpayer must actually be engaged in "business activities in that state." Dept. Reg. 810-27-1-4-.03(b)(1). That requirement prevents a taxpayer from voluntarily filing a return and paying the minimum tax in a state in which it has no business activities so as to be considered taxable in the state for apportionment purposes.

The MTC defines "income tax" as "a tax imposed on or measured by net income including any tax imposed on or measured by an amount arrived at by deducting expenses from gross income, . . ." Code of Ala. 1975, §40-27-1, Art. II. ¶4.

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[2] At the March 29 hearing, the Department also claimed that sales in Georgia, Kentucky, Missouri, and Pennsylvania should also be thrown back to Alabama. The Department now concedes that those sales should not be thrown back to Alabama.

A "franchise tax" is a tax on the privilege of being and acting as a corporation. . . ." *South Central Bell Telephone Co. v. State*, 789 So.2d 133, 144 (Ala. 1999).[3] Section 40-27-1, Art. IV. ¶3 includes both a franchise tax measured by net income and also a franchise tax on the privilege of doing business. Consequently, for purposes of the throwback rule, it is irrelevant that a franchise tax is levied on net income or some other measure. It qualifies in either case as a tax enumerated in §40-27-1, Art. IV. ¶3.

Finally, while a "corporate stock tax" is not defined by the MTC, the term "capital stock tax" is defined as "a tax measured in any way by the capital of a corporation considered in its entirety." Code of Ala. 1975, §40-27-1, Art. II. ¶5.

A capital stock tax as defined above is the functional equivalent of a corporate stock tax for purposes of the throwback rule. This is confirmed by Dept. Reg. 810-27-1-4-.03, which discusses the "concept of taxability in another state." An example in the regulation concludes that a corporation that is required by a state to pay a tax measured by (1) outstanding capital stock, and (2) surplus and undivided profits, is taxable in the state, i.e,, is subject to a corporate stock tax for purposes of the throwback rule. The tax in the

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[3] The distinction between a franchise tax and a net income tax is explained by Professor Walter Hellerstein as follows:

> State corporate taxes measured by net income broadly fall into the following two categories: (1) excise taxes on doing business, owning property, or engaging in other activities within the state, and on the privilege of doing, or the license to do, business in the state; and (2) taxes on net income derived from or attributable to the state. The excise tax is commonly referred to as a "franchise" tax, and the tax on net income is commonly referred to as a "direct net income" tax.

J. Hellerstein & W. Hellerstein, *State Taxation* (3d ed. 2001), ¶7.01.

example also qualifies as a "capital stock tax," as defined above, because in substance it is measured by "the capital of a corporation considered in its entirety." Section 40-27-1, Art II. 5. The two terms are thus interchangeable for purposes of the throwback rule.

The Taxpayer's activities in the five states in issue, and an analysis of whether the Taxpayer was "subject to" one of the enumerated taxes in those states, are set out below.

(1). Michigan.

Two of the Taxpayer's employees lived in Michigan in 1999 and 2000. The Taxpayer also owned personal property that it used in its business activities in Michigan in those years. The Taxpayer made sales to Michigan customers that totaled $1.8 million and $2.7 million in 1999 and 2000, respectively. The Taxpayer filed Michigan Single Business Tax ("SBT") returns and paid $112,649 and $95,082, respectively, in tax to Michigan in those years.

The Department contends that the Taxpayer's Michigan sales should be thrown back to Alabama because the Michigan SBT is not measured by net income. "The SBTA employs a value-added measure of business activity, but its intended effect is to impose a tax on the privilege of conducting business within Michigan and is not to impose a tax upon income." Department's Brief at 4, citing *ANR Pipeline Co. V. Dep't of Treasury*, 266 Mich. App. 198, 198 (Mich. Ct. App. 2005).

As discussed, a franchise tax need not be measured by or imposed on net income to be one of the taxes enumerated in §40-27-1, Art. IV, ¶3. The Michigan SBT is imposed "upon the privilege of doing business and not upon income." Michigan Comp. Laws, §208.31(3). The SBT is thus a franchise tax on the privilege of doing business, which is

one of the specific types of taxes listed in §40-27-1, Art. IV. ¶3. Consequently, the Taxpayer's Michigan sales in the subject years should not be thrown back to its Alabama sales factor numerator.

(2) and (3). Mississippi and Tennessee.

The Taxpayer had nonresident employees that solicited sales in Mississippi that totaled approximately $1.7 million and $1.8 million in 1999 and 2000, respectively. The Taxpayer did not, however, file and pay the Mississippi franchise tax on corporations in those years because the Mississippi State Tax Commission had previously notified the Taxpayer that it was protected from or not subject to the tax based on Public Law 86-272.[4]

The Taxpayer had two resident salesmen in Tennessee in 1999 and 2000 that solicited sales of $8.1 million and $9 million, respectively, in those years. It also owned personal property that it used in making the above sales. But as in Mississippi, the Taxpayer did not file and pay the Tennessee franchise tax in those years because the State had informed it that it was protected by Public Law 86-272.

The Department does not dispute that Mississippi and Tennessee both imposed a franchise tax on corporations during the subject years. Rather, it argues that because the Taxpayer neither filed returns nor paid the franchise tax to those States, the "sales should be 'thrown back' to Alabama since Knauf was not subject to a net income tax" in either State. Department's Brief at 6.

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[4] Public Law 86-272 is codified at 15 U.S.C. §381 et seq. Public Law 86-272 protects a taxpayer from a state tax imposed on or measured by net income if the taxpayer's only activity in the state is the solicitation of orders that are accepted outside of the state and filled by delivery from outside of the state. For an overview of Public Law 86-272, see *State Taxation* at ¶6.16 et seq.

To begin, as discussed above concerning Michigan, a franchise tax does not have to be measured by or imposed on net income to be one of the taxes enumerated in §40-27-1, Art. IV. ¶3. Consequently, the issue relating to the Mississippi and Tennessee sales is whether the throwback rule requires that a corporation must actually file a return and pay tax to a state.

For a corporation to be "subject to" one of the taxes in §40-27-1, Art. IV. ¶3, the corporation must actually be engaged in business activities in the state. Reg. 810-27-1-4-.03(b)(1). Alabama does not require, however, that the corporation must actually file a return and pay tax to the state.[5] The above regulation allows the Department to require a corporation to submit proof that it is subject to tax in a state, which may include evidence that the corporation filed a return and paid tax to the state. But filing a return and paying tax does not automatically establish that the corporation is "subject to" a tax for purposes of the throwback rule. As discussed above, a corporation is deemed not subject to a tax for purposes of the throwback rule if it files a return and pays tax, but is not engaged in "business activities in the state." Reg. 810-27-1-4-.03(b)(1). Conversely, the fact that a corporation does not file a return and pay tax also is not conclusive that the corporation is not subject to tax in the state. Again, the determinative question is whether the corporation is engaged in business activities in the state sufficient to make the corporation liable for one of the taxes listed in §40-27-1, Art. IV. ¶3.

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[5] Other states may require, either by statute or regulation, that tax must actually be paid for the throwback rule not to apply. For example, see Ill. Admin. Code tit. 86, §100.3200(a); regulation affirmed, *Dover Corp. v. Dept. of Revenue*, 648 N.E.2d 1089 (1995). As indicated, Alabama does not have such a requirement.

The Taxpayer did not file returns and pay tax in either Mississippi or Tennessee in the subject years because those states had previously notified the Taxpayer that it was protected by Public Law 86-272. If a corporation is protected from a state's tax by Public Law 86-272, the corporation is deemed not to be subject to tax in the state for purposes of the throwback rule. "The throwback rule (applies) only in cases in which federal constitutional restrictions or Public Law 86-272 deprive the purchaser's state of the power to impose a franchise, income, or similar tax." *State Taxation* at ¶9.18(1)(b).

The Taxpayer is correct, however, that Public Law 86-272 applies only to taxes imposed on or measured by net income, see 15 U.S.C. §§381(a) and 383. Consequently, because neither the Mississippi nor the Tennessee franchise tax is imposed on or measured by net income, Public Law 86-272 did not protect the Taxpayer from those taxes as a matter of law. Because the Taxpayer was engaged in significant business activities in both Mississippi and Tennessee and could not have been protected from those States' franchise taxes by Public Law 86-272, it was subject to those taxes for purposes of the throwback rule. The Taxpayer's sales in those states thus should not be thrown back to Alabama.

(4). Washington.

The Taxpayer had three employees that resided in and solicited sales of $.9 million and $1.7 million in Washington in 1999 and 2000, respectively. It also owned personal property in Washington that it used in making those sales. The Taxpayer filed Washington Business and Organization Tax ("B & O") returns for those years and paid $21,700 and $31,100 in tax, respectively.

Washington law provides that the B & O tax is based on gross proceeds, and is levied on "the act or privilege of engaging in business activities in Washington." Wash. Rev. Code §§82.64.450 and 82.04-220. The Washington tax is a franchise tax, and as such is one of the taxes enumerated in §40-27-1, Art. IV. ¶3. The Washington sales thus should not be included in the Taxpayer's Alabama sales factor numerator in the subject years.

(5). New Jersey (2000).

The Taxpayer had three employees in New Jersey that solicited sales of $.7 million from New Jersey customers in 2000. It also owned personal property in New Jersey that it used in soliciting the sales.

The Taxpayer paid the New Jersey corporation business (franchise) tax in 1998 and 1999.[6] Its New Jersey sales were not thrown back to Alabama in those years. However, the Taxpayer submitted a "Nexus Immune Activity Declaration" with its 2000 New Jersey return which indicated, in substance, that it was protected by Public Law 86-272. The Taxpayer thus paid the minimum $300 tax to New Jersey pursuant to New Jersey Admin. Code §18:7-1.9(d), which reads as follows:

> If the only business activity of a foreign corporation within New Jersey consists of the solicitation of orders for sales of its tangible personal property, which orders are to be sent outside the State for acceptance or rejection and, if accepted, are to be filled by shipment or delivery from a point outside the State, then such corporation is doing business in New Jersey and is subject to the tax. Unless it has additional contacts with New Jersey, however, it will not be liable for any tax measured by the income of the corporation. (See P.L. 86-272, 15 U.S.C. §381.) The corporation will be liable for filing a return and payment of the minimum tax.

[6] The extent or scope of the Taxpayer's activities in New Jersey in those years is not in evidence.

The Taxpayer argues that its sales in New Jersey in 2000 should not be thrown back to Alabama because it carried on business activities in New Jersey in 2000, and was thus subject to the New Jersey franchise tax in that year. I disagree.

Department Reg. 810-27-1-4-.03(b)(1)(B) provides that if a corporation pays a minimum fee for the privilege of doing business in a state, but "does actually engage in some business activity not sufficient for nexus and the minimum tax bears no relationship to the taxpayer's business activity in the state, the taxpayer is not subject to one of the taxes" in §40-27-1, Art. IV. ¶3. The regulation applies in this case.

The Taxpayer was engaged in some business activities in New Jersey in 2000. By its own admission, however, the activities did not go beyond the protection of Public Law 86-272. And because the minimum tax paid by the Taxpayer to New Jersey in 2000 had no relationship to the Taxpayer's business activities in New Jersey, the Taxpayer was not subject to one of the taxes enumerated in §40-27-1, Art. IV. ¶3. See, Reg. 810-27-1-4-.03(b)(1)(B). The Taxpayer's New Jersey sales in 2000 should thus be thrown back to Alabama.[7]

Issue (2). The Interest Deduction.

In computing its Alabama taxable income for the subject years, the Taxpayer excluded or removed the IDB interest income as a reconciliation adjustment to federal

[7] Public Law 86-272 did not apply as a matter of law in Mississippi and Tennessee because the franchise taxes levied by those States were not imposed on or measured by net income. Public Law 86-272 could apply to protect the Taxpayer from the New Jersey tax because it is measured in part on net income. The Taxpayer also certified to New Jersey that it was protected in 2000, and the Taxpayer has not otherwise established that its activities in New Jersey in 2000 went beyond those protected by Public Law 86-272.

taxable income because that income was exempt from Alabama tax, see Code of Ala. 1975, §§40-18-34(a) and 11-20-47. The Department does not dispute that adjustment.

The Taxpayer did not, however, add-back the rent payments that had been deducted as interest in arriving at federal taxable income. As discussed, the Department in effect disallowed the interest deductions by adding the payments back as a reconciliation adjustment to federal taxable income. The Department does not dispute that the rent paid by the Taxpayer to the IDB should be treated as interest for income tax purposes. It argues, however, that the otherwise deductible interest cannot be allowed based on 26 U.S.C. §265.

During the years in issue, §40-18-35(a)(2) allowed corporations to deduct "interest paid or accrued within the taxable year on indebtedness as determined in accordance with 26 U.S.C. §§163, 264, and 265."[8] IRC §163 generally allows a deduction for interest paid or accrued on indebtedness during the tax year. However, IRC §265 limits or prohibits a deduction for interest paid on certain borrowed funds, as follows – "Interest on indebtedness incurred or continued to purchase or carry obligations the interest on which is wholly exempt from the taxes imposed by this subtitle (26 U.S.C. §§1 et seq.)" shall not be allowed as a deduction. See, 26 U.S.C. 265(a)(2).

[8] The interest deduction for corporations at §40-18-35(a)(2) was repealed by Act 99-665, effective for tax years beginning on or after January 1, 2001. The interest deduction statute was repealed because Act 99-664 also formally adopted federal taxable income as the line 1 starting point for computing a corporation's Alabama tax liability. Because federal taxable income already takes into account or reflects the federal interest deduction, a general interest deduction statute for Alabama purposes was no longer needed. Act 99-664 did include, however, at least one specific deduction for interest paid, see, Code of Ala. 1975, §40-18-35(a)(9). The effect of that section is discussed below.

The Department argues that because the IDB interest income was exempt from Alabama tax, "§265 of the IRC prohibited the interest on that corresponding indebtedness from being taken as a deduction. Because it did not qualify as a deduction pursuant to §265, it did not qualify as a deduction pursuant to §40-18-35(a)(2)." Department's Brief at 2.

The Department further asserts that the Alabama Legislature enacted a specific exemption for interest paid on IDB lease financing arrangements pursuant to Act 99-664, effective for 2001 and subsequent years. See, Code of Ala. 1975, §40-18-35(a)(9). The Department contends that if a deduction was allowed for such interest during the years in issue, as argued by the Taxpayer, it would not have been necessary for the Alabama Legislature to later enact a specific exemption for such interest.

The Taxpayer claims that IRC §265 does not apply for two reasons. It first argues that §265(a)(2) only applies if the income from the obligations is "exempt from the taxes imposed by this subtitle (26 U.S.C. §§ 1 et seq.)," i.e., federal income tax. It thus asserts that because the IDB interest income in issue was not exempt from federal tax, §265(a)(2) does not apply. I disagree.

Code of Ala. 1975, §40-18-1.1 provides that if Alabama has adopted a specific federal statute, such as IRC §265 in this case, "the principles set forth in such specified section or sections and the computations required by such section or sections shall be applied" for Alabama purposes. The principle behind IRC §265 is that a taxpayer cannot deduct interest paid on money borrowed to purchase tax-exempt obligations. That is, an interest deduction cannot be allowed for federal purposes if the obligations purchased with

the borrowed funds are exempt from federal tax. Applying that IRC §265 principle, an interest deduction cannot be allowed for Alabama purposes if the obligations purchased with the borrowed funds are exempt from Alabama tax. Consequently, IRC §265, if otherwise applicable, prohibits an Alabama deduction for interest paid on borrowed funds used to purchase IDB bonds (and other obligations) that are exempt from Alabama tax.

The Taxpayer argues in the alternative that it purchased the exempt IDB bonds with its own funds, not funds borrowed from the IDB. It thus contends that the interest was not paid on funds borrowed to purchase the exempt bonds, as required for IRC §265(a)(2) to apply. "Knauf, however, used the 'borrowed' funds for the purchase and construction of the (Chambers County) plant. Knauf purchased the bonds with its own funds – funds that previously were not related to the bonds or construction of the (Chambers County) plant." Taxpayer's Brief at 34. I agree.

There is no evidence the Taxpayer borrowed the $54-plus million it used to purchase the exempt IDB bonds. Rather, the Taxpayer is correct that the "borrowed funds," i.e., the $54-plus million, on which the Taxpayer paid the deductible "interest" was used for a legitimate business purpose, i.e., to construct and equip the Chambers County plant.

The Department refers to the interest paid by the Taxpayer as being on a "corresponding indebtedness." Department's Brief at 2. The $54 million the Taxpayer paid for the IDB bonds and the $54 million "loaned" by the IDB to the Taxpayer to construct the facility are "corresponding" in the sense that they both related to the Chambers County project. That does not, however, make IRC §265 applicable to the interest paid by the Taxpayer to the IDB. Because the interest was not paid on funds borrowed by the

Taxpayer to purchase the exempt IDB bonds, as required for IRC §265 to apply, the interest amounts are deductible under IRC §163.

The above conclusion is not altered by the fact that the Alabama Legislature later enacted a specific interest deduction for rent paid under IDB financing agreements pursuant to Act 99-664, effective for 2001 and subsequent years. The Taxpayer opines in its Reply Brief at 6, that by enacting the specific deduction, the "Legislature thus did not intend to provide for a new deduction; it intended to safeguard an existing deduction, ensuring its availability regardless of how (the rent payments) would be treated for federal income tax purposes."

The Taxpayer may or may not be correct because it is oft-times difficult to divine the intent of the Alabama Legislature. But in any case, the subsequent enactment of a specific deduction for interest paid on IDB financing agreements does not alter the fact that such interest was previously deductible for Alabama purposes pursuant to IRC §163, and the deduction, at least in this case, was not barred or prohibited by IRC §265.

The tax relating to the 1998 tax year is due to be dismissed for the reasons explained in the March 6, 2006 Preliminary Order, which is incorporated into and made a part of this Order. The Department is directed to recompute the Taxpayer's 1999 and 2000 liabilities as previously agreed and as directed herein. The Department should notify the Administrative Law Division of the adjusted amounts due for those years. A Final Order will then be entered voiding the 1998 tax, and entering judgment for the reduced amounts due for 1999 and 2000.

This Opinion and Preliminary Order is not an appealable Order. The Final Order,

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

Entered November 30, 2006.

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BILL THOMPSON
Chief Administrative Law Judge

bt:dr
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