

TATE & LYLE INGREDIENTS	§	STATE OF ALABAMA
AMERICAS, INC.		DEPARTMENT OF REVENUE
2200 E. ELDORADO STREET	§	ADMINISTRATIVE LAW DIVISION
DECATUR, IL 32521-1578,		
	§	
Taxpayer,		DOCKET NO. CORP. 07-162
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

**FINAL ORDER DENYING DEPARTMENT'S
APPLICATION FOR REHEARING**

The Administrative Law Division entered a Final Order in this case on May 12, 2008 reducing the corporate income tax final assessment in issue to \$11,322. The Department timely applied for a rehearing.

The Department first argues that the Administrative Law Division improperly addressed the issue of whether the Department was constitutionally barred from taxing the income in question. It contends that the constitutional issue should not have been addressed because “it was not necessary or even relevant for the disposition of the case. . . .” Department’s Application for Rehearing at 2. I disagree.

The constitutional issue was one of the two issues addressed by both parties in their post-hearing briefs. The Department recognized the importance of the constitutional issue when it stated in its brief that “[t]he central issue of this case is whether the State of Alabama can constitutionally tax an apportioned share of the Taxpayer’s profit from the sale of its interest in Amylum. . . .” Department’s Post-Hearing Brief at 1. The Administrative Law Division was thus duty-bound to address the constitutional issue. In any case, while the Department states that the constitutional analysis was “unnecessary and improper,” it does not explain why the analysis is incorrect or an improper application of the relevant

constitutional principles enunciated by the U. S. Supreme Court.

The Department also argues that the Administrative Law Division misapplied the transactional test in determining if the income in issue was business or nonbusiness income. Specifically, the Department claims that the Administrative Law Division improperly considered “the frequency and regularity of similar transactions” in deciding if the transactional test applied. *Tate & Lyle*, O.P.O. at 29. It contends that “the Alabama Legislature very carefully and purposefully omitted frequency and regularity and words of similar import in redrafting” the 2001 amendment to the Alabama definition of “business income.” Department’s Post-Hearing Brief at 3. I again disagree.

The Department fails to recognize that the 2001 amendment to the definition of “business income” retained verbatim the transactional test language that was in the pre-2001 definition of the term. Consequently, the Alabama Supreme Court’s interpretation and application of the transactional test in *Ex parte Uniroyal Tire Co.*, 779 So.2d 227 (Ala. 2000) still applies. The Administrative Law Division thus correctly cited *Uniroyal* as holding that “the frequency and regularity of similar transactions” should be considered in determining if the transactional test applies. *Uniroyal*, 779 So.2d at 230.

Finally, the Department correctly states that the functional test would be satisfied if “the taxpayer acquired, held, managed or disposed of the Amylum stock as a part of . . . any of its various business activities.” Department’s Application for Rehearing at 3. But as explained in the Opinion and Preliminary Order at 29:

The gain also did not constitute business income under the functional test because the Taxpayer did not acquire, manage, or dispose of the Amylum stock as an integral part of its regular business of selling cereal sweeteners. As discussed, the Taxpayer and Amylum operated totally separate and

independent businesses. The Taxpayer's purchase, ownership, and/or sale of the Amylum stock had nothing to do with the Taxpayer's business in Alabama or elsewhere.

Tate & Lyle Ingredients, O.P.O. at 29 – 30.

The Department's application for rehearing is denied.

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

Entered June 23, 2008.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

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