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| 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. | | |
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| STATE OF ALABAMA | | |
| DEPARTMENT OF REVENUE. | § | |

**PRELIMINARY ORDER DENYING DEPARTMENT'S
MOTION TO HOLD CASE IN ABEYANCE**

The Department has moved to have this case held in abeyance pending a decision by the U.S. Supreme Court in *Mead Corporation v. Department of Revenue*, 861 N.E.2d 1131 (Ill. App. 2007), cert. granted S. Ct. Dkt. No. 06-1413 (September 25, 2007). In that case, Mead sold its 100 percent interest in Lexus/Nexus. The Illinois Appellate Court found that the gain from the sale was business income, and that Illinois could constitutionally tax the income because it was operationally related to Mead's activities in Illinois.

The Department argues that the Supreme Court's holding in *Mead* could "affect the holding and/or constitutional and/or factual analysis of any decision regarding this appeal." Department's Motion at 1. The Department asserts that the Administrative Law Division has held other cases in abeyance, even if, as in this case, one party objects, citing *Knowlton v. State of Alabama, Inc.* 04-443 (Admin. Law Div. Second P.O. 8/25/2005).

There is no hard and fast rule as to when an appeal pending before the Administrative Law Division should be held in abeyance. *Knowlton* involved an issue of first impression in Alabama that had previously been decided by the Administrative Law Division, and which was pending on appeal before the Alabama Court of Civil Appeals. *Lanzi v. State of Alabama, Inc.* 02-721 (Admin. Law Div. 9/26/2003). *Knowlton* was held in

abeyance because the decision by the Court of Civil Appeals in *Lanzi* would be the first appellate court decision on the issue, and would control the Administrative Law Division's subsequent decision in the case.

In this case, however, the constitutional issue in dispute has been decided by the U.S. Supreme Court in numerous cases. See, for example, *Allied-Signal*, 112 S.Ct. 2251 (1992); *Container Corp. of America v. Franchise Tax Board*, 103 S.Ct. 2933 (1983); *ASARCO, Inc. v. Idaho State Tax Comm'n*, 102 S.Ct. 3103 (1982); *F.W. Woolworth Co. v. Taxation and Revenue Dept.*, 102 S.Ct. 3128 (1982); *Mobil Oil Corp. v. Commissioner of Taxes of Vermont*, 100 S.Ct. 12223 (1980). The *Mead* case is also not controlling on the separate issue of whether the income in issue is apportionable "business income" under Alabama's definition of the term.

Although the Supreme Court's holding in *Mead* cannot be predicted, I suspect that the Court did not grant certiorari for the purpose of changing its established constitutional law on the issue. Rather, it granted certiorari because the Illinois Appellate Court's holding is contrary to the above cases.

In any case, an evidentiary hearing has already been held in this case, and the parties have filed briefs and reply briefs. It is also expected that the case will be appealed to circuit court, regardless of how the Administrative Law Division rules. Consequently, if the U.S. Supreme Court's decision in *Mead* changes its established law on the constitutional issue, the changes, if relevant, can be considered and applied by the circuit court on appeal. Under the circumstances, the Administrative Law Division will decide the case in due course.

Entered December 3, 2007.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

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