

RHEEM MANUFACTURING CO., INC. §
405 LEXINGTON AVENUE
NEW YORK, NY 10174-0307 §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer, §

DOCKET NOS. F. 00-132A

F. 00-174A

F. 00-175A

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE. §

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

A Final Order was entered in this case on April 21, 2006. The Department timely applied for a rehearing. Rheem responded on May 25, 2006.

The Department presents seven arguments in its application for rehearing. It first argues that the Administrative Law Division can only review and rule on issues previously presented to and decided by the Department. It thus contends that the Administrative Law Division could not address or rule on the pushed-down goodwill issue because the issue was not raised by Rheem in its refund petitions filed with the Department. "The Division, as created, is an appellate entity, separate from the Department, and, as such, provides only appellate review of decision reached by the Department." Department's Application for Rehearing at 1.

The above argument was addressed and rejected by the Administrative Law Division in the April 21, 2006 Final Order, at 7 – 12. The Administrative Law Division is not "an appellate entity, separate from the Department," as argued by the Department. The legislative intent in enacting Chapter 2A of Title 40, Code 1975, which includes the statutes that created and govern the Administrative Law Division, was "to provide equitable and uniform procedures for the operation of the department. . . ." Code of Ala. 1975, §40-2A-

2(1)(a). The operation of the Administrative Law Division is thus part and parcel of the operation of the Department.

The statutory duties and functions of the Administrative Law Division are quasi-judicial in nature, but the Administrative Law Division still operates as an administrative arm of the Department. Appeals before the Administrative Law Division are thus a continuation of the administrative process within the Department, the goal of which is to determine a taxpayer's correct liability. If a taxpayer timely appeals to and invokes the jurisdiction of the Administrative Law Division, either from a disputed final assessment or a denied refund, the function of the Administrative Law Division is to determine the taxpayer's correct liability for the subject period, and the amount of any additional tax or refund due, as applicable. In doing so, the Administrative Law Division can and should review and consider all issues relevant to the taxpayer's liability. Code of Ala. 1975, §40-2A-9(a) specifies that the statutory procedures that govern the Administrative Law Division "should be liberally construed to provide for the fair, efficient, and complete resolution of all matters in dispute." The matter in dispute in this case is whether Rheem is due refunds in the subject years, and if so, in what amounts. Whether the pushed-down goodwill should be included in Rheem's franchise tax base was clearly relevant to that issue, and was thus properly considered and decided by the Administrative Law Division.

The next five arguments raised by the Department in its application were adequately addressed in the Final Order. They will not be addressed further here.

The last and only new argument raised by the Department is that any provision that requires the Department to pay interest on refunds is unconstitutional. "Under §14 of the

Alabama Constitution of 1901, the Department disputes the constitutionality of any provision of the TBOR providing for interest to be paid to the Taxpayer in light of the award of a refund.” Department’s Application for Rehearing at 6.

First, the payment of interest on refunds is required by Code of Ala. 1975, §40-1-44. Although §40-1-44 was amended by the Act through which the TBOR was enacted, Act 92-186, it is not a part of the TBOR, which is found in Chapter 2A of Title 40, Code 1975. In any case, the Department has previously argued, and Alabama’s courts have previously held, that the Administrative Law Division, as a part of the Revenue Department, an executive branch agency, is not empowered to declare a statute unconstitutional. *Ex parte Carlisle*, 894 So.2d 721 (Ala. Civ. App. 2004); *Beaird v. City of Hokes Bluff*, 595 So.2d 903 (1992); *Merritt Oil Co., Inc. v. State of Alabama*, Misc. 96-441 (Admin. Law Div. 3/12/97).

The Department’s application is denied. The April 21, 2006 Final Order is affirmed.

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 1, 2006.

BILL THOMPSON
Chief Administrative Law Judge