

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. 98-208

F. 00-132

F. 00-174

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE. §

PRELIMINARY ORDER

These cases involve the Alabama franchise tax liability of Rheem Manufacturing Company, Inc. ("Taxpayer") for 1994 through 1999. A hearing was conducted on August 11, 1998 in Docket F. 98-208, which concerns the 1998 tax year. However, before a decision was rendered, that case and all other franchise tax appeals pending before the Administrative Law Division were held in abeyance pending the outcome of a constitutional challenge to Alabama's foreign franchise tax.

The U.S. Supreme Court ruled in 1999 that Alabama's foreign franchise tax was unconstitutional in *South Central Bell Tel. Co. v. Alabama et al*, 119 S.Ct. 1180 (1999). On May 17, 2002, the Alabama Supreme Court decertified and dismissed for lack of subject matter jurisdiction a class action involving franchise tax refunds. See, *Michael L. Patterson v. Gladwin*, 835 So.2d 137 (Ala. 2002). The Supreme Court held in *Gladwin* that to obtain a franchise tax refund, a foreign corporation must comply with the administrative procedures set out in the Uniform Revenue Procedures Act, Code of Ala. 1975, §40-2A-7, et seq.

All franchise tax appeals pending before the Administrative Law Division, including the appeals in issue, were administratively transferred for handling to the Attorney General's Administrative Hearings Division in March 2003. The Taxpayer subsequently

petitioned to have its claims relating to the use of an alternative apportionment formula and the applicability of push-down accounting severed from the constitutional issues. The non-constitutional claims were subsequently severed and transferred back to the Administrative Law Division for handling.

The appeals filed by the Taxpayer are consolidated. This consolidated appeal will only address the non-constitutional issues involved in the case. The Taxpayer's claims for refunds based on the U.S. Supreme Court's holding in *South Central Bell* will not be addressed, but rather will be decided in due course, if necessary, by the Attorney General's Administrative Hearings Division.

A pre-hearing conference was conducted on March 8, 2004 for the purpose of determining the most efficient way to proceed in the case. Jason Thomas and Jenny Flowers represented the Department. Roy Crawford represented the Taxpayer.

It was decided at the March 8 conference that the applicability of push-down accounting was the overriding issue, and thus should be decided first. That issue was not addressed at the August 11, 1998 hearing in Docket F. 98-208. The parties agreed that instead of holding an evidentiary hearing on the issue, they would attempt to submit the issue on a stipulation of fact. The parties will then be allowed time to brief the issue.

The parties should submit a joint stipulation of facts to the Administrative Law Division by April 30, 2004. The stipulation should contain sufficient background facts that will enable the Administrative Law Division to enter a Final Order or Opinion and Preliminary Order in the case. The parties will be allowed sufficient time to file briefs and reply briefs after the joint stipulation is filed.

The Taxpayer's alternative apportionment claim will be addressed at a later time, if necessary.

Entered March 25, 2004.