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ALABAMA DEPARTMENT OF REVENUE REVENUE RULING 96-005

This document may not be used or cited as precedent. Ala. Code
§40-2A-5(a) (1993 Replacement Volume).

TO: Company A

FROM: Commissioner of Revenue
Alabama Department of Revenue

DATE: September 4, 1996

RE: Alabama foreign franchise tax consequences for a corporation whose only connection with the State of Alabama is its ownership interest in an Alabama limited liability company formed by Company A which limited liability company does business in Alabama.

ISSUES AND FACTS

Company A is the parent company of an affiliated group of corporations and business entities involved primarily in the manufacture of metal and plastic products. The company's business is comprised of a process steel product segment, a custom product segment and a cast products segment. Company A is considering locating a steel processing plant in Alabama.

At this point, the company anticipates that the steel processing plant will be built and operated by an Alabama limited liability company which will be owned by two or more corporate affiliates of Company A. At some time in the future, other investors not affiliated with Company A may become members in the limited liability company as well.

The corporations which are presently being considered to be members in the Alabama L.L.C., which will be called L.L.C. Company (the "L.L.C."), are all operating companies incorporated and commercially domiciled outside the state of Alabama and which presently do not have any business operations or other nexus with the state of Alabama. None of these proposed members have qualified to do business in Alabama, nor do any of them file Alabama franchise or income tax returns. Upon becoming members of L.L.C. Company, these members' only connection with the state of Alabama will be their ownership interest in the limited liability company. The Articles of Organization and Operating Agreement of L.L.C. Company will provide for

management by the members. It is anticipated that all management activities will occur outside Alabama. L.L.C. Company will hire employees to conduct its day-to-day activities in Alabama.

LAW AND ANALYSIS

Due to the relative newness of the Alabama Limited Liability Company Act, there are no statutes, cases or regulations governing the issue of whether a corporation will be deemed to be doing business in Alabama solely by reason of an ownership interest in an Alabama limited liability company which does business in Alabama. Likewise, there are no statutes, cases or regulations which determine whether the mere ownership of an interest in an Alabama limited liability company subjects that owner to Alabama's foreign franchise tax.

Alabama law does, however, support a finding that a membership interest in an Alabama limited liability company is not doing business in Alabama for franchise tax purposes. The Alabama Limited Liability Company Act provides that "all property originally contributed to the limited liability company or subsequently acquired by a limited liability company by purchase or otherwise is limited liability company property. A member has no interest in specific limited liability company property." Ala. Code, §10-12-23. In contrast, the Alabama Partnership Act states that "a partner is co-owner with his partners of specific partnership property holding as a tenant in partnership." Ala. Code, §10-8-72(a).

Prior litigation has resulted in a determination that ownership of a partnership interest in a partnership doing business in Alabama is sufficient to subject that owner to Alabama's foreign franchise tax. The rationale for such ruling is that an interest in a partnership entitles that owner to an undivided interest in specific partnership profit. See American Television and Communications Corp., Docket No. F. 95-258. Conversely, Alabama law is clear that an ownership interest in an Alabama limited liability company is just that, an ownership interest. The law specifically states that any property owned by the limited liability company is that company's property.

Similarly, Alabama Code § 10-12-20 states that a member of an Alabama limited liability company is not liable under any judgment, decree or order of a court, or in any other manner, for a debt, obligation, or liability of the limited liability company, whether arising in contract, tort or otherwise. In contrast, Alabama Code §10-8-52 states that partners are jointly and severally liable for all debts and obligations of the partnership. This contrast demonstrates the recognition under Alabama law that a member of a limited liability company is

separate and distinct from the limited liability company itself and that the actions (contracts, torts, etc.) of the limited liability company in carrying out its business are not attributable under Alabama law to its members.

This statutory framework is consistent with a ruling that membership in a limited liability company doing business in Alabama does not cause the members of the limited liability company to be doing business in Alabama for franchise tax purposes.

The Alabama Supreme Court has ruled many times on the issue of whether a corporation is doing business in Alabama for franchise tax purposes. A leading case is State of Alabama v. City Stores Company, 277 Ala. 412, 171 So. 2d 121 (1965). In City Stores, the only activity of a foreign corporation in Alabama was the ownership of real estate. In ruling that such ownership did not subject the corporation to the franchise tax the court stated "the mere investment in or ownership of property interests in Alabama by a foreign corporation does not subject it to a franchise tax." It is consistent with the City Stores holding that the ownership of an interest in an Alabama limited liability company will not subject the members thereof to the franchise tax.

Based on the fact that (1) the corporate members of L.L.C. Company will perform their management functions from their offices outside of Alabama; (2) Alabama does not deem that the members will have any interest in the property of the limited liability company to be located in Alabama; (3) the members will not be liable under Alabama law for any debts or liabilities of the limited liability company that will be incurred by its business operations in Alabama; and (4) Alabama case law supports a finding that mere ownership of an investment in Alabama does not constitute doing business in Alabama, it does not appear that corporate members of L.L.C. Company would be liable for filing Alabama foreign franchise tax returns or paying Alabama foreign franchise tax solely due to their ownership interests in the subject limited liability company.

HOLDING

Company A contemplates the building of a steel processing plant in Alabama which will be built and operated by a limited liability company. This limited liability company will be owned by two or more corporate affiliates of Company A and at some time in the future other investors not affiliated with Company A will become members in the limited liability company. Based on the above analysis, the Department issues the following ruling:

Corporate members of L.L.C. Company will not be

company will be owned by two or more corporate affiliates of Worthington Industries, Inc. and at some time in the future other investors not affiliated with Worthington Industries, Inc. will become members in the limited liability company. Based on the above analysis, the Department issues the following ruling:

Corporate members of Worthington Steel Company of Decatur, L.L.C. will not be liable for filing Alabama foreign franchise tax returns or paying Alabama foreign franchise tax solely due to their ownership interest in the limited liability company.

H. E. "GENE" MONROE, JR.

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