

**ALABAMA DEPARTMENT OF REVENUE  
REVENUE RULING 03-002 (SUPPLEMENT)**

**This document may not be used or cited as precedent. Code of Ala. 1975, § 40-2A-5(a).**

TO:

FROM: Commissioner of Revenue  
Alabama Department of Revenue

DATE: July 14, 2003

RE: The Applicability of Property Taxation on Equipment Proposed to be  
Subject to a Lease with a Nominal Purchase Option.

Dear Sir:

This is supplemental to your original ruling (Revenue Ruling 03-002). The **Facts** have been previously stated in the original ruling and will not be restated in this supplement.

**ISSUE**

In your request for a Revenue Ruling you have asked for the Alabama Department of Revenue's ("Department") position concerning the following issue:

1. Whether the Customer is the party obligated to include the Equipment in its personal property tax return as of October 1 of each tax year and whether the Customer is the proper entity to be assessed the applicable ad valorem tax?

## **ANALYSIS OF ALABAMA LAW**

It is the Department's position that the substance over form controls in determining whether certain property is subject to ad valorem tax. The Alabama Supreme Court in Ex Parte State Dep't of Revenue, 624 So. 2d 582 (Ala. 1993) (citing Rust Engineering Co. v. State, 286 Ala. 589, 243 So.2d 695 (Ala. 1971)), specifically held that a court must employ the doctrine of substance over form when determining the taxability of a transaction.

It is also the Department's position that the "true owner" is not always the person who possesses the title, but the person who receives the benefits and burdens from the property itself. The Alabama Supreme Court has consistently held that property is properly assessed to the general and beneficial owner; that is, the person whose interest is primarily one of possession and enjoyment and in contemplation of an ultimate absolute ownership. See Crow v. Outlaw, 225 Ala. 656, 145 So. 133 (Ala. 1932). The paper title alone is not always determinative of ownership of property for tax purposes. State v. Bankhead Mining Co., Inc., 188 So.2d 527, 279 Ala. 566, 569 (Ala. 1966); see also State v. West Point Development Corp., 280 Ala. 100, 190 So.2d 535 (Ala. 1966). The Wisconsin Supreme Court, in Mitchell Aero, Inc. v. City of Milwaukee, 42 Wis.2d 656, 662, 168 N.W.2d 183 (Wis. 1969), stated a helpful description of ownership:

Ownership is often referred to in legal philosophy as a bundle of sticks or rights and one or more of the sticks may be separated from the bundle and the bundle will still be considered ownership. What combination of rights less than the whole bundle will constitute ownership is a question which must be determined in each case in the context of the purpose of the determination.

Id. at 185-186; see also U.S. v. Craft, 535 U.S. 274, 122 S. Ct. 1414 (2002).

The Alabama Supreme Court noted in Ex Parte State, 206 Ala. 575, 90 So. 896 (Ala. 1921), that the purchaser under a conditional sale contract was the owner for ad valorem tax purposes and stated the following rule:

So, when a statute requires that property be assessed to the owner, we think it means the general and beneficial owner -- that is, the person whose interest is primarily one of the possession and enjoyment in contemplation of an ultimate absolute ownership -- and not the person whose interest is primarily in the enforcement of a collateral pecuniary claim, and does not contemplate the use or enjoyment of the property as such.

Id. at 896.

In Ex Parte State, the Court further stated that “the retention of title by a vendor of personalty does not make him the absolute owner of the property. It is, at most, a form of security for the payment of the purchase money.”

Applying these precedents, it is the position of the Department that although the Taxpayer will hold legal title to the subject property, the Customer will be in a position more comparable to that of the actual owner than the Taxpayer because it will be in possession of the property, bear all costs of taxes, maintenance, repair and insurance, bear all risk of loss, and enjoy the benefits of ownership of the property. The Taxpayer is interested in the Equipment only as collateral for its loan to Customer. The Taxpayer receives the benefit of its bargain with Customer and the repayment of the principal on its loan with interest upon the completion of the payments under the lease contract. Both parties intend and agree that true ownership of the Equipment lies with Customer. Therefore, the Customer will be the owner for ad valorem tax purposes.

### **RULING**

Based upon the particular facts of this case and with respect to Property Taxation, the Customer, and not the Taxpayer, will have to include the Equipment in its personal property tax return as of October 1 of each tax year. Further, the Customer is the proper entity to be assessed the applicable tax. At all times, the Customer owns and controls possession of the Equipment subject only to the Taxpayer’s security interest in the Equipment.

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Dwight Carlisle, Commissioner  
Department of Revenue

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