

ALABAMA DEPARTMENT OF REVENUE  
REVENUE RULING 98-011

**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: July 30, 1998

RE: Application of Admissions Tax, Initial Franchise and Annual  
Franchise Tax to Newly Formed Holding Company And Its  
Subsidiaries.

**FACTS**

Company A is a Delaware corporation headquartered in Alabama which operates several lines of business as divisions. Company A intends to form a holding company for one of its divisions and to transfer to that holding company all of the assets used in the division's operation. In connection with this plan, Company A formed Holding on December 10, 1997, pursuant to the laws of the State of Delaware to serve as the holding company of the hardware division's line of business.

During the third quarter of 1998, Holding intends to form three wholly-owned Delaware subsidiaries--Company B, Company C and Company D.

Company B will develop and manufacture products for sale to Company C, and to unrelated distributors who will market them under both Company A and non-Company A brand labels. Company C, will market, sell and distribute Company A brand products and related services to unrelated retail customers and to related and unrelated resellers. Company D will own all non-U.S. sales and marketing subsidiaries and will conduct all related investment management and control activities, either with its own staff or through a related-party administrative service agreement. Holding, Company B and Company C will operate in and be domiciled in Alabama, but Company D will not.

On July 1, 1998, in return for \$1000.00, Holding issued 10,000 shares of its

\$.01 par value common stock to Company A. On July 9, 1998, the Secretary of State issued to Holding a Certificate of Authority to Transact Business. On July 9, 1998, Holding also filed with the Alabama Department of Revenue its Admission Tax Return, paying the \$500.00 maximum and its initial Foreign Corporation Franchise Tax Return, Permit Application and Annual Report, paying the minimum franchise tax. Also filed was the corporate resolution of the Board of Directors of Holding required by Alabama Code Section 40-14-1 in order to limit the admission tax to \$500.00.

On July 31, 1998, Holding will issue 44,990,000 additional shares of common stock to Company A in return for \$4,499,000 in cash so that thereafter, Holding will have issued an outstanding 45,000,000 shares of common stock.

Upon formation, Company B, Company C, and Company D will be initially capitalized with \$1,000.00 and will issue 10,000 shares of \$.01 par value stock to Holding. Following issuance of the common stock, Company B and Company C would immediately file an application for Certificate of Authority of a foreign corporation to transact business in Alabama. Concurrently with the filing for the Certificate of Authority to transact business, Company B and Company C, will file with the Alabama Department of Revenue the Admission Tax Return and initial Foreign Corporation Franchise Tax Return, Permit Application and Annual Report. In connection with these filings, the corporate resolutions required by Alabama Code §40-14-1 will be filed so as to limit the admission tax to \$500.00. With respect to Company B and Company C, the resolutions will authorize each to be the successor or assignee of assets of Holding.

Company A will contribute to Holding approximately \$88,000,000.00 in assets and inventory and Holding will then distribute those assets among Company B, Company C, and Company D. This contribution will occur prior to December 31, 1998. Holding will at all times own more than 50 percent of Company B, Company C, and Company D.

### **ISSUES**

1. Are Holding, Company B and Company C, entitled to limit the admissions tax each pays to \$500.00 and does the transfer of \$88,000,000.00 in assets after the initial filing affect the availability of the \$500.00 admissions tax cap?

2. Are Holding, Company B and Company C, entitled to calculate their initial franchise tax on initial capital on \$1,000.00 and does the later issuance of more stock for cash and a capital contribution of \$88,000,000.00 in assets affect that calculation?

3. Is Holding entitled to exclude from its annual franchise tax calculations its investment in Company B, Company C, and Company D?

### **ANALYSIS**

As to issue number one, Section 40-14-1 of the Alabama Code provides for an "Admission Tax" to be paid by foreign corporations qualifying for the first time to do business in Alabama. The tax is based on the actual amount of capital employed or to be employed in Alabama. The tax is limited to a maximum amount of \$500.00 if when the foreign corporation files the certificate required under Alabama Code Section 40-14-2, it also files certified resolutions of the board of directors authorizing the corporation to become the successor or assignee of all or a substantial portion of the taxable property within Alabama of a corporation qualified to do business in Alabama and such corporation does actually become the successor or assignee within one year from the date of such filing.

On the date of Holding's qualification to do business in Alabama, its total capital was \$1000.00. When its initial franchise tax return and admissions tax return were filed, the statement required by Section 40-14-2 and the board of director's resolution required by Section 40-14-1 were also filed. With respect to Holding's subsidiaries Company B and Company C, Holding will follow the same procedure as was followed when it was capitalized and its qualification to do business obtained, including the filing of the board of directors' resolution authorizing receipt of another Alabama taxpayer's assets.

As such, Company B and Company C, are entitled to the \$500.00 admissions tax cap and the transfer of \$88,000,000 in assets will not impact the availability of the admission tax cap.

As to issue number two, Alabama Code Section 40-14-41 requires every foreign corporation doing business in this state to pay a franchise tax and Section 40-14-54 requires that the initial foreign corporation franchise tax return be filed within 10 days of qualification to do business in Alabama. Section 40-14-46 provides that for corporations which qualify after July 1st of each year, the tax shall be 1/2 of the year's tax. While Section 40-14-41 sets forth the method to be employed in determining the capital employed in Alabama for franchise tax purposes, it does not specify the exact date to be used for the initial franchise tax calculation. Alabama law is clear that the date of liability of the newly qualified corporations is the date of qualification under the Alabama laws.

Based on the above, Holding, Company B and Company C, are each entitled to calculate their initial franchise tax on the \$1000.00 of capital each had on their date of qualification. Neither the subsequent issuance of more stock for cash nor the capital contribution of \$88,000,000 in assets will affect the initial franchise tax

calculation.

As to issue number three, when Holding and its subsidiaries Company B, Company C, and Company D commence operation on January 1, 1999, it is anticipated that Holding, Company B and Company C, will be subject to Alabama foreign franchise tax on capital employed in Alabama. It is also anticipated that Company D will not be subject to Alabama's foreign franchise tax.

Alabama Code Section 40-14-41(d)(1) provides for the exclusion from the amount of capital employed in Alabama the Taxpayer's investment in the stock of another corporation if such corporation also pays a franchise tax to the State of Alabama. Alabama Code Section 40-14-41(d)(2) provides for the exclusion from the amount of capital employed in Alabama the Taxpayer's investment in the stock of the corporation that does not pay a franchise tax to Alabama if the Taxpayer owns more than 50 percent of the outstanding capital stock of such other corporation, unless the other corporation is dormant and not regularly engaged in one or more business activities.

Based on the above, Holding will be entitled to exclude from its annual Alabama franchise tax calculation the amount of its investment in Company B and Company C, pursuant to Alabama Code Section 40-14-41(d)(1). Based upon the representations of Company A, Company D proposed activities constitute business activities within the meaning of Alabama Code Section 40-14-41(d)(2) and Company D, therefore, will not be dormant and will be engaged in a business activity. The amount of Holding's investment in Company D, therefore, will be excluded from Holding's annual franchise tax base pursuant to Alabama Code Section 40-14-41(d)(2).

### **CONCLUSION**

With respect to Holding:

- a. Holding is entitled to the \$500.00 Admissions Tax cap set forth in Section 40-14-1, and Company A's transfer in 1998 to Holding of its hardware division assets will not prohibit the availability of the cap.
- b. Holding is entitled to pay one-half of the minimum franchise tax of \$25.00 on its Initial Franchise Tax Return based on the \$1000.00 of capital which it employed on its date of qualification to do business in Alabama, i.e., July 9th, and the subsequent transfer in 1998 of Company A's hardware division assets will not affect the initial franchise tax calculation.

c. In calculating its annual franchise tax for years subsequent to 1998, Holding will be entitled to exclude from capital employed in Alabama its investment in Company B and Company C, pursuant to Section 40-14-41(d)(1), and to exclude from capital employed in Alabama its investment in Company D pursuant to Section 40-14-41(d)(2).

With respect to Company B and Company C:

a. Both corporations are entitled to the \$500.00 Admission Tax cap set forth in Section 40-14-1, and Holding's transfer of a portion of Company A's hardware division assets will not prohibit the availability of the cap;

b. Both corporations are entitled to pay one-half of the minimum franchise tax of \$25.00 on their respective Initial Franchise Tax Returns based on the \$1000.00 of capital which each will employ on the date of their qualification to do business in Alabama, and Holding's transfer of a portion of Company A's hardware assets will not affect the initial franchise tax calculations.

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H. E. "GENE" MONROE, JR.

HEM:DES:pj