

ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 98-015

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

TO: Taxpayer(s)

FROM: Commissioner of Revenue
Alabama Department of Revenue

DATE: June 30, 1999

RE: Title to leased vehicles owned by a Delaware business trust

ISSUES AND FACTS

Company B is an automotive finance company and a wholly-owned subsidiary of Company A, the exclusive distributor of certain vehicles in the United States. Company B currently provides motor vehicle lease financing in all 50 states including Alabama by purchasing assignments of retail sales contracts and leases that are originated from licensed motor vehicle dealers. Company B, like many other finance companies, raises capital through the issuance of asset-backed securities using bankruptcy-remote special purpose subsidiary entities to own assets (including loan receivables) and sell securities or certificates to investors.

To that end, Company B created a new subsidiary for the purpose of facilitating the issuance of asset-backed securities for lease receivables. This new subsidiary, Company C, a Delaware business trust (herein referred to as the Trust), was formed, for the purpose of holding title to motor vehicle lease agreements and the related vehicles. The Trust has been operating in other states nationwide and proposes to commence the leasing and titling of vehicles in Alabama. Presently, Taxpayer B is the servicing agent of the Trust and performs all titling, registration, administrative and servicing duties for the leases on behalf of the Trust.

Company D, the managing trustee of the Trust (herein referred to as the Trustee), is a Delaware corporation qualified to do business in Alabama with the Alabama Secretary of State to act as a trustee for a trust holding title to property in the state of Alabama. The Trust also registered with the Alabama Secretary of State and the Department of Revenue, as a foreign corporation doing business as Company C. Company B presently owns all the beneficial interests in the Trust.

Under the proposed lease program, when a Company B dealer or an affiliated entity dealer

(herein referred to as a Dealer) originates a motor vehicle lease to a retail customer, the lease agreement and the related vehicle will be sold or assigned by the Dealer to the Trust. The Trust, as purchaser and holder of the leases, will be the lessor under the leases. The Dealer, acting pursuant to a power of attorney executed by the Trustee or its agent, will submit an application for the original certificate of title to the leased vehicle, and registration where appropriate, reflecting the Trust or Trustee as the owner of the vehicle. As mentioned above, Company B, or an affiliate of Company B, will service the leases on behalf of the Trust, dealing directly with the lessee, and therefore may be named as an administrative lienholder on the certificate of title.

The issues presented are:

1. whether a certificate of title and registration to a vehicle in the State of Alabama may be issued either in the name of (a) the Trust, or (b) the Trustee on behalf of the Trust, without violating Alabama motor vehicle titling or registration laws, and
2. whether the Trust or the Trustee can be listed as the owner of that vehicle.

LAW AND ANALYSIS

The Trust was formed in Delaware as a Delaware business trust and thus is governed by the laws of Delaware. Generally, business entities, including business trusts, are governed by the law of the State in which they are organized, unless doing so would produce a result contravening the public policy of the forum state. *See, e.g.,* 13 Am. Jur. 2d Business Trusts 7 (It is generally held that an instrument creating a business or Massachusetts trust should be construed by the law of that state where the trust was organized); 12A C.J.S. *Business Trusts* 13 (same); see also *Liberty Nat'l Bank & Trust Co. v. New England Investors Shares, Inc.*, 25 F.2d 423 (D.C. Mass. 1928); *Greenspun v. Lindley*, 330 N.E.2d 79 (N.Y. App. Div. 1975); *Rottenberg v. Pfeiffer*, 383 N.Y.S.2d 189 (N.Y. App. Div. 1976); *Hart v. General Motors Motors Corporation*, 517 N.Y.S.2d 490 (N.Y. App. Div. 1987).

The Alabama Code does not specifically deal with the issue of which state's laws govern foreign business trusts, in this case, whether that would be Delaware law or Alabama law. By analogy, however, Ala. Code § 10-12-46 states the laws of the state or other jurisdictions under which a foreign limited liability company is organized govern its organization, its internal affairs, and the liability of its members. Also, Ala. Code 10-2B-15.05 does not authorize the state to regulate the organization or internal affairs of a foreign corporation authorized to transact business in this state, but defers to the state of incorporation.

The latter example is particularly helpful because business trusts are often classified as corporations under Article XII, section 241 of the *Constitution of Alabama of 1901*. Thus, a Delaware business trust doing business in Alabama, such as the Trust, generally is required to register as a foreign corporation with the Secretary of State and the Department of Revenue and is subject to Alabama's foreign corporation franchise tax as in effect on January 1, 1999. *See,*

e.g., Rev. Rul. 94-006 (A business trust will be treated as an association if its corporate characteristics are such that it more nearly resembles a corporation than a trust... citing the above constitutional provision). The Trust has indeed registered with the Alabama Secretary of State and the Department as a foreign corporation.

The Delaware Business Trust Act (the Act) grants a great deal of flexibility in the organization and operation of Delaware business trusts. The stated policy of the Act is to give maximum effect to the principle of freedom of contract and to the enforceability of governing instruments. *Del. Code Ann.*, tit. 12, 3821. In furtherance of this policy, a Delaware business trust is defined as:

an unincorporated association which (i) is created by a governing instrument under which property is or will be held, managed, administered, controlled, invested, reinvested and/or operated . . . by a trustee or trustees for the benefit of such person or persons as are or may become entitled to a beneficial interest in the trust property.

Del Code Ann., tit. 12, 3801.

Section 3801 specifically states that a business trust may be formed to carry on any lawful business or activity, including, without limitation, *for the purpose of holding or otherwise taking title to property*, whether in an active or custodial capacity. (emphasis added).

Delaware s policies are also evident in *Delaware Code*, title 12, section 3809, which states that Delaware laws pertaining to trusts are applicable to business trusts except to the extent otherwise provided in the *governing instrument of a business trust* or in this chapter. (Emphasis added). In other words, the governing instrument will prevail unless its terms are contrary to a provision of the Act, which in this case they are not.

Under governing law and the Trust s terms, the sale or transfer of a beneficial interest in the Trust is permitted under certain conditions and does not cause it to dissolve or terminate. *See Del. Code Ann.*, tit. 12, 3805(d). Additionally, according to both Delaware law and the Trust s governing instrument, the owner of a beneficial interest in the Trust does not own an interest in specific Trust assets. *Del. Code Ann.*, tit. 12, 3805(c). Moreover, a Delaware business trust is granted perpetual existence, and cannot be dissolved or terminated by a beneficial owner or transferee, except in accordance with the express terms of the governing instrument. *Del. Code Ann.*, tit. 12, 3808(a).

The Alabama Business Corporation Act provisions would be closely analogous if not governing in this instance, since the Trust is classified as a corporation under Article XII, section 241 of the *Constitution of Alabama* and is registered as such both with the Alabama Secretary of State and with the Department. There is no provision in the Alabama Business Corporation Act for the dissolution of a corporation upon the sale or other transfer of its stock by one shareholder to a new shareholder or group of shareholders. *See Ala. Code* 10-2B-14.01.

HOLDINGS

1. Either the Trust or the Trustee may hold title and the related motor vehicle registration to the vehicles sold by Dealers in Alabama. Neither the titling nor registration procedures described in this ruling request will violate any Alabama motor vehicle titling or registration laws.
2. The Trust's governing instrument allows the vehicles to be titled either in the name of the Trustee or the Trust. We are not aware of any provision of Delaware or Alabama law that prohibits this practice. Thus, either the Trust or the Trustee may hold title to the vehicles that are leased within the state of Alabama. The Trust would, of course, be responsible for any and all taxes due to the state and local taxing authorities as a result of its ownership and leasing of the leased vehicles.

James P. Hayes, Jr.