

ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 99-004

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

TO: Company "A"

FROM: James P. Hayes, Jr.
Commissioner of Revenue
Alabama Department of Revenue

DATE: July 22, 1999

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

ISSUES AND FACTS

Company "A" is located at 123 Main Street, Anytown, USA (FEIN 0000001). Company "A" or an affiliate or subsidiary thereof ("ABC") traditionally has provided motor vehicle lease financing in Alabama, primarily through the network of XYZ Corporation franchised motor vehicle dealers. ABC is requesting confirmation that the proposed titling and registration of leased motor vehicles under a designated trust complies with the laws of the State of Alabama. ABC believes that other motor vehicle finance companies have discussed similar proposals with the State of Alabama.

In a motor vehicle lease agreement, the motor vehicle dealer enters into a lease with a lessee. Once the lessee's credit is approved and the lease is originated (the dealer is the original lessor), the dealer sells the lease and the vehicle to ABC. ABC, as assignee, becomes the lessor and owner of the vehicle. Title and registration are issued in ABC's name.

In order to diversify its financing sources for motor vehicles leases, ABC

proposes the following:

BC has created a qualified Delaware business trust (the "Trust") for purposes of holding title to motor vehicles. ABC will be listed as the initial beneficiary of the Trust. Under this proposal, the motor vehicle dealer (or another third party) will sell the leased vehicles and the related leases to the Trust. The Trust will hold legal title to the leased vehicles and the leases. Certificates of title to the leased vehicles will be issued in the name of the Trust or in the name of the trustee for the Trust for the benefit of the Trust. The Trust, as the assignee, will be the lessor under the leases. ABC or an affiliate thereof may be named as an administrative lien holder and will service the leases on behalf of the Trust and continue to deal directly with the lessee. If this proposal is approved by the State, the transaction will not change or alter the lessees' current position.

As the primary beneficiary of the Trust, ABC will not have a direct interest in the leased vehicles and the leases. Instead, ABC will have a beneficial interest in the Trust which will entitle ABC the cash proceeds generated from the lease transactions. ABC shall have the right to transfer, pledge or otherwise assign all or a portion of such beneficial interest in the Trust, including the right to receive the cash flows from specified leases and related vehicles.

At no time will any leased vehicle be delivered to any transferee of a beneficial interest in the Trust, nor will any transferee have either a direct ownership interest in the leased vehicles and the leases or the right to receive anything other than the cash proceeds of the leased vehicles and the leases and, in certain cases, the tax benefits from beneficial ownership of the vehicles. As described above, ABC will continue to service the leases relating to such transferred beneficial interest.

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 Corporation*, 517 N.Y.S.2d 490 (N.Y. App. Div. 1987).

Although the Code of Alabama does not specifically mention foreign business trusts, governing law provisions are found in the Code for other types of business entities that are organized in other states and do business in Alabama. For example, "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." Ala. Code §10-12-46. Also, the Alabama Business Corporation Act "does not authorize this 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. Ala. Code §10-2B-15.05.

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 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 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 the 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.

HOLDING

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.
Commissioner of Revenue

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