

KIMBERLY-CLARK CORPORATION	§	STATE OF ALABAMA
KIMBERLY-CLARK WORLDWIDE, INC.	§	DEPARTMENT OF REVENUE
3800 CITIBANK CENTER TAMPA	§	ADMINISTRATIVE LAW DIVISION
BUILDING B 2 13		
TAMPA, FL 33610-9559,	§	
Taxpayers,	§	DOCKET NOS. CORP. 01-983
		CORP. 01-995
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

ORDER DENYING TAXPAYERS' MOTION

The Administrative Law Division issued a Final Order in this case on March 11, 2003, holding that certain income received by the Taxpayers in the subject years constituted apportionable "business" income pursuant to Code of Ala. 1975, §40-27-1, Art. IV, 1(a). The Department appealed to Montgomery County Circuit Court, which reversed the finding of the Administrative Law Division by Order dated July 24, 2007.

The Taxpayer appealed to the Court of Civil Appeals, which reversed the circuit court's decision on March 21, 2008. The Department appealed to the Alabama Supreme Court, which reversed the Court of Civil Appeals' decision on February 26, 2010.

The Taxpayers applied for a rehearing with the Supreme Court, which the Court denied on September 17, 2010. The Supreme Court also remanded the case to the Court of Civil Appeals "for the reinstatement of the order of the circuit court upholding the Department's final assessments against (the Taxpayers) in this matter." *Ex parte Alabama Dept. of Revenue*, ____ So.3d ____ 2010 WL675606, at 9 (Ala. 2010). The Court of Civil Appeals has taken no action in the case on remand.

The Taxpayer subsequently filed a motion in circuit court seeking to have the case remanded to the Administrative Law Division for a decision concerning a constitutional

issue the Taxpayers claim they raised before the Division. The circuit court denied the motion on December 6, 2010. The court also denied the Taxpayers' motion for the circuit court to withhold its ruling on the motion to remand.

On December 30, 2010, the Taxpayers filed "Taxpayers' Motion for Ruling on Constitutional Argument" with the Administrative Law Division. The Department filed an opposing brief on January 4, 2011.

The Taxpayers' motion is denied, or, more technically, cannot be considered, because the Administrative Law Division, like the circuit court, does not have jurisdiction in the case. Rather, the case is currently pending on remand before the Court of Civil Appeals. The Department correctly argues that a circuit court does not have jurisdiction in a case if the case is pending in an appellate court. *Ex parte Tiongson*, 765 So.2d 643 (Ala. 2000). If the circuit court that ruled in this case lacks jurisdiction, certainly the Administrative Law Division also lacks jurisdiction.

The above adequately disposes of this matter. Consequently, I will not decide the issue raised in Section IV. of the Department's brief that the Taxpayers did not adequately raise or present a constitutional issue when they initially appealed to the Administrative Law Division.

I note, however, that the Taxpayers both delineated the same two identical "Issues" in their appeals to the Administrative Law Division. Neither delineated issue raised or mentioned a constitutional question, although both Taxpayers cited various U.S. Supreme Court cases in support of their claim that the gain in issue was apportionable business income. But the question of whether the Taxpayers adequately raised a constitutional issue before the Administrative Law Division is moot given the Division's lack of jurisdiction

in the matter.

Entered January 31, 2011.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

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