

BUDGET RENT A CAR SYSTEM, INC. §  
4225 Napierville Road  
Lisle, Illinois 60532,

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. F. 94-418

v.

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

§

### FINAL ORDER

The Revenue Department assessed franchise tax against Budget Rent A Car System, Inc. ("Taxpayer") for the years 1989 through 1992. The Taxpayer appealed to the Administrative Law Division, and a hearing was conducted on June 21, 1995. Jeffrey E. Olsberg represented the Taxpayer. Assistant Counsel Dan Schmaeling represented the Department.

The issue in this case is whether certain debt of the Taxpayer should be included as "capital" for franchise tax purposes pursuant to Code of Ala. 1975, §40-14-41(b). Specifically, does the debt constitute "capital" either as (1) long-term debt maturing and payable in more than one year pursuant to §40-14-41(b)(3), or (2) short-term debt owed to a related party pursuant to §40-14-41(b)(4).

The Taxpayer is in the light truck and car rental business. The Taxpayer entered into loan and security agreements with various lenders on September 30, 1986 to finance the motor vehicles used in its rental business. The lenders are Ford Motor Credit, General Motors Acceptance Corporation ("GMAC"), and Chrysler Credit Corporation. The agreements provide the Taxpayer with a continuous line of credit by which the rental fleet vehicles are financed. The Taxpayer's parent corporation, Budget Rent A Car

Corporation, also signed the agreements as guarantor.

The Taxpayer and the lenders executed notes for the vehicles financed under the agreements. The debt relating to each vehicle is required to be paid in full when the vehicle is disposed of by sale, trade, loss, or otherwise. Approximately 99 percent of the vehicles are disposed of by the Taxpayer, and the underlying debts paid, within six months of purchase.

The loan agreement between the Taxpayer and Ford Motor Credit (Taxpayer Exhibit E) provides at Section 2.4 that the principal amount of each loan shall be repaid in installments. Section 2.4(c) also provides "that the outstanding principal balance of each loan shall be due and payable on the Settlement Date of the twenty-fourth month following the month in which the vehicle financed by such loan was originally placed in service". The promissory notes issued to Ford Motor Credit (Taxpayer Exhibit E1) provide that "this note is issued pursuant to, and is subject to the terms of, . . ." the loan and security agreement between the Taxpayer and Ford Motor Credit referenced above.

The loan agreement between the Taxpayer and GMAC (Taxpayer Exhibit F) provides at Section 4. that monthly payments shall be made as specified in the notes. The agreement does not set a specific maturity date for the notes, and none of the GMAC notes were submitted into evidence.

The loan agreement between the Taxpayer and Chrysler Credit (Taxpayer Exhibit G) provides at Section 4 that the Taxpayer agrees to pay the principal and interest on the notes in monthly installments. The "outstanding principal balance of each note . . ., shall mature and become due and payable . . . eighteen months after the date of such note".

Code of Ala. 1975, §40-14-41(b)(3).

Section 40-14-41(b)(3) includes as capital all bonds, notes, and other evidences of indebtedness "maturing and payable" in more than one year. The Taxpayer argues that the notes in issue are not long-term pursuant to subparagraph (b)(3) because the notes are paid within six months. I disagree.

The debts in issue are "maturing and payable" in more than one year. The notes issued to Ford Motor Credit matured and were payable in 24 months. The notes issued to Chrysler Credit were due and payable in 18 months.<sup>1</sup> Consequently, applying the plain wording of the statute, the notes constitute long-term debt pursuant to §40-14-41(b)(3). The fact that the debt may actually be paid in full within one year is not relevant.

The above holding is supported by the decision in State v. Magnolia Methane Corp., Admin. Law Docket No. S. 94-178, decided June 27, 1994 (aff'd Montgomery County Circuit Court, September 15, 1995). The issue in Magnolia Methane was whether certain demand notes constituted long-term debt pursuant to §40-14-41(b)(3). The Department argued that the notes were long-term, and thus capital under subparagraph (b)(3), because they were not actually paid within one year. The Department's argument was rejected and the notes were held to be short-term because they were payable on demand.

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<sup>1</sup>Neither the GMAC notes nor the payment terms of those notes were submitted into evidence.

The plain language of §40-14-41(b)(3) is that a debt is long-term and thus must be included as capital only if it matures and is payable more than one year after the first day of the franchise tax year. A demand note by its own terms is payable immediately upon demand, not in more than one year. A demand note thus is not a long-term indebtedness, but rather is in substance identical to the open-account advances at issue in Noranda, which were treated as short-term debt. The fact that the Taxpayer did not have sufficient assets to pay the note immediately does not convert the demand note to long-term debt, nor does the fact that the Taxpayer characterized the note as "non-current" for internal accounting purposes.

Magnolia Methane, at page 3.

The rationale of Magnolia Methane also applies in this case. The notes issued under the loan agreements are long-term because they mature and are payable in more than one year. The fact that they are prepaid in most cases within one year does not cause the long-term obligations to be short-term.

Code of Ala. 1975, §40-14-41(b)(4).

Section 40-14-41(b)(4) includes as capital short-term debt owed to a related corporation. Obviously, because the debt in issue is long-term, subparagraph (b)(4) is not applicable. However, even if the debt is construed as short-term, subparagraph (b)(4) still would not apply because the debt is not between the Taxpayer and its parent, Budget Rent A Car Corporation. Rather, the debt is clearly between the Taxpayer and the unrelated lenders.

The above considered, the final assessment in issue is affirmed, and judgment is entered against the Taxpayer for franchise tax for the years 1989 through 1992 in the amount of \$150,986.98, plus applicable interest.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered October 2, 1995.

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BILL THOMPSON  
Chief Administrative Law Judge