

CONCRETE HOLDING COMPANY
OF ALABAMA, INC.
Post Office Box 2728
Birmingham, Alabama 35202-2728,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. F. 96-136

FINAL ORDER

The Revenue Department assessed franchise tax against Concrete Holding Company of Alabama, Inc. ("Taxpayer") for the years 1992 through 1995. The Taxpayer appealed to the Administrative Law Division, and a hearing was conducted on April 9, 1996. Brad Ellison represented the Taxpayer. Assistant Counsel Jeff Patterson represented the Department.

An intercompany debt owed by a subsidiary corporation to its parent corporation constitutes capital for Alabama franchise tax purposes under Code of Ala. 1975, §40-14-41(b)(4). The issue in this case is whether an intercompany payable owed by the Taxpayer to its parent can be netted or reduced by an intercompany receivable owed to the Taxpayer by another related corporation.

The Taxpayer failed to include in its Alabama franchise tax base for the subject years an intercompany payable owed to its parent corporation, National Cement Company. The Taxpayer concedes that the intercompany payable constitutes capital as defined at §40-14-41(b)(4). However, the Taxpayer argues that it properly netted or reduced the intercompany payable by an intercompany

receivable owed it by another related corporation, Kirkpatrick, Inc. The Taxpayer argues that such third-party netting is authorized by State v. Arch of Alabama, Inc., Admin. Law Docket F. 90-173, decided August 8, 1994. I disagree.

The issue in Arch was whether intercompany receivables could be deducted from a foreign corporation's capital base in excess of intercompany payables. The Department's unwritten policy at the time allowed netting of intercompany receivables against intercompany payables, but not in excess of payables. On appeal, the Administrative Law Division not only disallowed netting in excess of payables, it also rejected the Department's netting policy altogether because it was not authorized by statute. However, because other similarly situated foreign corporations had been allowed to net intercompany receivables against payables during the period in question, netting was disallowed prospectively only from the date of the Arch decision.

Rick Umstead, Franchise Tax Hearing Officer, testified at the April 9 hearing in this case that the Department's pre-Arch netting policy applied only to intercompany payables and receivables between the same two corporations. He testified that to his knowledge, the Department has never allowed netting of intercompany payables and receivables between different corporations, as the Taxpayer has attempted in this case. Consequently, Arch is not applicable in this case. Even if Arch was applicable, netting could only be allowed up to the date of the Arch Final Order,

August 8, 1994.

The Department stopped its netting policy after Arch, but now allows it as a result of Act 95-564. That Act requires that the items of capital at §40-14-41(b) must be determined using generally accepted accounting principals ("GAAP"). Under GAAP, intercompany payables and receivables between a parent and a subsidiary corporation are recorded for accounting purposes on the subsidiary's financial statements as a net amount in a single account. GAAP does not require, however, that an intercompany receivable owed to the subsidiary by another related corporation should also be netted against the payable account owed to the parent. Such third-party netting cannot be allowed.

The above considered, the final assessment in issue is affirmed as entered. Judgment is entered against the Taxpayer for franchise tax of \$5,787.51, 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 May 2, 1996.

BILL THOMPSON
Chief Administrative Law Judge