CREDIT SUISSE FIRST BOSTON USA INC. 11 MADISON AVENUE NEW YORK, NY 10010-3643, Taxpayer, v. STATE OF ALABAMA DEPARTMENT OF REVENUE.	§ § § § § §	STATE OF ALABAMA ALABAMA TAX TRIBUNAL DOCKET NO. BIT. 15-1666

FINAL ORDER

The Revenue Department assessed Credit Suisse First Boston USA, Inc. ("Taxpayer") for Alabama business income tax for the tax year 2006. The Taxpayer appealed to the Tax Tribunal pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was held on August 16, 2017. Attorney Ralph Clements represented the Department. The Taxpayer was notified of the hearing, but failed to attend.

The assessment results from the Department's addback adjustment of interest expense paid to related companies pursuant to Code of Ala. 1975, §40-18-35(b). The adjustments increased the Taxpayer's taxable income, and consequently, resulted in additional tax due.

In its Notice of Appeal, the Taxpayer argued that it is entitled to deductions for its interest expenses paid to related members pursuant to the addback exceptions found at §§ 40-18-35(b)(1) and 40-18-35(b)(3). Specifically, the Taxpayer argues that it incurred interest expense to foreign affiliates, and that the expense generated income for the affiliates that was subject to tax in foreign jurisdictions, primarily the United Kingdom and Switzerland. Therefore, the Taxpayer argues, the payments are an exception to the addback requirement pursuant to §40-18-35(b)(1). The Taxpayer also argues that interest

expenses paid to Credit Suisse Capital, a United States affiliate, have a business purpose, and therefore, are not required to be added back pursuant to §40-18-35(b)(3).

The Department answered the Taxpayer's appeal arguing that the Taxpayer has not shown that the interest payments to foreign affiliates were subject to tax in a foreign jurisdiction with an income tax treaty with the United States - a requirement the Taxpayer must meet to show that the payments are an exception to the addback requirement pursuant to §40-18-35(b)(1). The Department requested that the Taxpayer provide documents, such as tax returns, to show that tax was paid on the interest payments.

As for the interest expense paid to Credit Suisse Capital, the Department argues that the Taxpayer has not met its burden of showing that the interest payment transactions have a substantial business purpose, economic substance, and that the transactions have the same terms and conditions that would exist in comparable, arms-length transactions. The Department argues that several of the interest payments were made to a related company that appears to be engaged solely in financing activities, and therefore would not meet the primarily engaged exception found in §40-18-35(b)(3). Thus, the Department argues, the Taxpayer has not met its burden of proof for the transactions to be presumed "not to have a principle purpose of tax avoidance."

At the August 16 hearing, the Department asserted several additional arguments. First, the Department asserted that the Form AB - a form listing each payment of interest or intangible expense by the Taxpayer to a related company - attached the Taxpayer's return was not signed by the Taxpayer, and therefore, cannot be relied upon as accurate. Second, the Department asserted that the Taxpayer failed to include the consolidated federal Form 1120 showing the income of the members of the consolidated group. Last,

the Department asserted that the Taxpayer has not shown that the interest expense was paid directly by the Taxpayer or by a third party on the Taxpayer's behalf.

Alabama's addback rules place restrictions on the Taxpayer's deductibility of certain intangible expenses and interest expenses paid to a related member. Specifically, relevant to this appeal, Alabama's addback statute states as follows

> (1) For purposes of computing its taxable income, a corporation shall add back otherwise deductible interest expenses and costs and intangible expense and cost directly or indirectly paid, accrued, or incurred to, or in connection directly or indirectly with one or more direct or indirect transactions, with one or more related members, except to the extent the corporation shows, upon request by the commissioner, that the corresponding item of income was in the same taxable year: a. Subject to a tax based on or measured by the related member's net income in Alabama or any other state of the United States, or b. subject to a tax based on or measured by the related member's net income by a foreign nation which has in force an income tax treaty with the United States, if the recipient was a "resident" of the foreign nation.
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> (3) The adjustments required in subdivision (1) shall not apply to that portion of interest expenses and costs and intangible expenses and costs if the corporation can establish that the transaction giving rise to the interest expenses and costs or the intangible expenses and costs between the corporation and the related member did not have as a principal purpose the avoidance of any Alabama tax and the related member is not primarily engaged in the acquisition, use, licensing, maintenance, management, ownership, sale, exchange, or any other disposition of intangible property, or in the financing of related entitles. If the transaction giving rise to the interest expenses and costs or intangible expenses and costs, as the case may be, has a substantial business purpose and economic substance and contains terms and conditions comparable to a similar arm's length transaction between unrelated parties, the transaction will be presumed to not have as its principal purpose tax avoidance, subject to rebuttal by the Commissioner of the Department of Revenue.

§40-18-35(b).

To date, the Taxpayer has failed to submit any documentation to the Tax Tribunal to show that the interest expenses it paid to related companies were subject to a tax in a foreign jurisdiction which has in force an income tax treaty with the United States. Additionally, the Taxpayer has submitted no evidence to show that the transactions giving rise to the interest expenses paid to its United States affiliates had a substantial business purpose, economic substance, and contained terms and conditions comparable to a similar arm's-length transaction between unrelated parties. Without such a showing, the transactions are presumed to have tax avoidance as their principal purpose.

Assessments entered by the Department are presumed correct. Code of Ala. 1975, §40-2A-7(b)(5)c. The Taxpayer bears the burden of proving that the assessment is incorrect. *Id.* The Taxpayer has failed to produce evidence to prove its claims that the 2006 business income tax assessment entered against it is incorrect.

The final assessment is affirmed. Judgment is entered against the Taxpayer for 2006 tax, interest and penalty of $581,668.52. Additional interest is also due from the date the final assessment was entered, October 16, 2015.

This Final Order may be appealed to circuit court within 30 days, pursuant to Ala. Code § 40-2B-2(m).

Entered September 7, 2016.

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CHRISTY O. EDWARDS
Associate Tax Tribunal Judge

cc: Ralph M. Clements, III, Esq.
Tom Finlan