

EXXON MOBIL CORPORATION §
P.O. Box 2443
Houston, TX 77210-2443, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer, §

DOCKET NOS. MISC. 03-141
MISC. 03-281

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FOURTH PRELIMINARY ORDER

These consolidated appeals involve a denied refund of oil and gas privilege and production tax requested by Exxon Mobil Corporation (“Taxpayer”) for January 1992 through December 1996 (Docket Misc. 03-141), and a final assessment of oil and gas privilege and production tax entered against the Taxpayer for the same period (Docket Misc. 03-281). Docket Misc. 03-141 was originally set to be heard on July 8, 2003. However, the parties requested before the scheduled hearing that the cases be consolidated, and that a hearing should first be conducted concerning the legal issues relating to the workback method. After those issues are decided, a second evidentiary hearing will be conducted to determine the amount of any net tax or refund due, as applicable. The Administrative Law Division granted the motion. The July 8, 2003 hearing in Docket Misc. 03-141 was canceled, and a consolidated hearing was scheduled for September 25, 2003 concerning the workback method issues.

On September 3, 2003, the Department requested a continuance to allow it time to retain expert witnesses in the case. The case was accordingly rescheduled for January 14, 2004.

On October 7, 2003, the Taxpayer appealed to the Administrative Law Division concerning a denied petition for refund of oil and gas privilege and production tax for March

1997 through December 2000. The Administrative Law Division treated that appeal as an amendment to the Taxpayer's prior denied refund appeal concerning January 1992 through December 1996 (Docket Misc. 03-141).

In November 2003, the Administrative Law Division inquired as to whether the January 14, 2004 hearing in this case, and also hearings scheduled in other pending oil and gas appeals, should be rescheduled to allow the parties time to depose expert witnesses. The Administrative Law Division discussed the matter with both parties, and reset the hearing in this case for February 25, 2004. At the request of the Taxpayer, and with the agreement of the Department, the February 25 hearing was reset for March 31, 2004.

In mid-February 2004, the Taxpayer requested a pre-hearing conference in the case, which was conducted on February 18, 2004. The Taxpayer argued at the conference that the Department had recently indicated that it intended to depose twelve employees or independent contractors used by the Taxpayer. The Taxpayer asserted that the Department could have deposed the individuals earlier, that the case had been delayed long enough, and that the March 31, 2004 hearing should not be rescheduled. The Administrative Law Division nonetheless reset the hearing for June 22, 2004 to allow the parties time to take all necessary depositions.

Only depositions were discussed at the February 18 conference. It was made clear that the Uniform Revenue Procedures Act, Code of Ala. 1975, §40-2A-7 et seq., does not include or give the Administrative Law Judge subpoena or discovery authority. Consequently, any depositions would be voluntary and by agreement of the parties. The parties agreed to cooperate in completing all depositions before the June 22 hearing.

The parties scheduled the first round of depositions for March 24, 2004 in Houston, Texas. A week before the scheduled depositions, the Department e-mailed the Taxpayer a request to produce various documents at the depositions. The Taxpayer objected, and the parties discussed the request on Friday, March 19. What the parties agreed to at that time, if anything, is not clear. In any case, they apparently agreed that the depositions would be conducted as scheduled on March 24.

On Monday afternoon, March 22, the Department issued a subpoena duces tecum to the Taxpayer directing it to produce records at the March 24 depositions, or at least by April 6. At the request of the Taxpayer, the Administrative Law Division and the parties participated in a conference call on March 24 concerning the production request.

During the call, the Taxpayer objected generally to the production request. It first argued that it was physically impossible to gather the documents and timely comply with the request. It also contended that the parties had agreed that the scheduled depositions would take place without the production of documents. It argued that if it was required to produce documents, it would not agree to conduct the depositions as scheduled. Rather, it wanted the Administrative Law Division to enter a scheduling order that set a time certain for the exchange of documents and the taking of depositions.

The Department responded by first disputing that it had ever agreed to proceed with the depositions without the production of documents. It also argued that its document request pursuant to the subpoena duces tecum was outside of the Administrative Law Division's jurisdiction.

The Department does have subpoena authority, independent of the Administrative Law Division. Code of Ala. 1975, §40-2A-7(a)(4). The Administrative Law Division does,

however, have general authority over all appeals filed with the Division. Code of Ala. 1975, §40-2A-9.

In this case, the production of documents issue was never raised with the Administrative Law Division before the March 24 conference call. Rather, as discussed, the Administrative Law Division had only addressed the issue of whether the hearing in the case should be continued to allow the Department time to take depositions. A continuance was granted for that purpose, over the Taxpayer's strong objection. The Department also acknowledged during the March 24 conference call that there was not an outstanding document request pending before the Administrative Law Division.

The Taxpayer was instructed during the conference call to proceed with the depositions as scheduled. The Administrative Law Division will not require or direct the Taxpayer to produce any documents before the scheduled June 22 hearing because (1) the Department has not requested documents through the Administrative Law Division, and (2) it is unclear that any documents, at least those requested in the Department's subpoena, would constitute or contain evidence relevant to the legal issues to be addressed at the June 22 hearing.¹ If the Taxpayer believes that the Department's subpoena request is overly broad, or it needs additional time to comply, or that the Department should not be allowed to independently subpoena records while this appeal is pending, I would suggest that the parties attempt to reach a reasonable compromise.

¹ The Taxpayer offered during the March 24 conference call to continue the June 22 hearing and allow full discovery under the Ala. Rules of Civil Procedure. In my opinion, that would have settled the issue once and for all because this case will likely be appealed to circuit court, and those Rules will then apply. However, the Department refused the offer, for whatever reason.

Failing that, the Taxpayer may contest the subpoena in the appropriate circuit court.

The hearing will be conducted as scheduled on June 22, 2004. The scope of that hearing is limited to the various issues relating to the workback method; and specifically, what costs incurred by the Taxpayer relate to the processing and marketing of the Taxpayer's gas, and are thus deductible under the workback method. Only evidence relevant to those issues should be submitted at the hearing.

To insure that the June 22 hearing is conducted in an orderly, expeditious manner, I am instructing the parties "that it shall not be necessary for either party to make objections during the hearing to any testimony or evidence offered by either party, and such objections shall be preserved and may be made on appeal. The final order issued by the administrative law judge shall be based only on such evidence as is relevant, competent, and material." Code of Ala. 1975, §40-2A-9(j).

Entered March 26, 2004.