

TEE JAYS INDUSTRIES, INC.	§	STATE OF ALABAMA
P.O. Box 2033		DEPARTMENT OF REVENUE
Florence, AL 35630-0033,	§	ADMINISTRATIVE LAW DIVISION
Taxpayer,	§	DOCKET NO. CORP. 04-150
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

FINAL ORDER

The Revenue Department assessed Tee Jays Industries, Inc. (“Taxpayer”) for 1999 corporate income tax. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on May 18, 2004. Kealon Drake represented the Taxpayer. Assistant Counsel Jeff Patterson represented the Department.

The Taxpayer is the parent corporation of Tee Jay Manufacturing Company, Inc. (“Tee Jay Manufacturing”). Tee Jay Manufacturing had purchased 50 percent of the stock of Shirt Depot, Inc. (“Shirt Depot”) in the mid-1990’s. It purchased the remaining 50 percent of the stock of Shirt Depot in January 1999. Shirt Depot was subsequently liquidated pursuant to 26 U.S.C. §332. Shirt Depot had an outstanding NOL carryover when it was liquidated.

The Taxpayer and its affiliated subsidiaries filed a consolidated 1999 Alabama income tax return pursuant to Code of Ala. 1975, §40-18-39. It claimed the NOL attributable to Shirt Depot on the return. The Department disallowed the NOL because it had no evidence that Shirt Depot had been liquidated in a transaction that qualified for §332 treatment.

26 U.S.C. §332 provides that no gain or loss shall be recognized by the receiving corporation on property distributed pursuant to a complete liquidation of a wholly owned subsidiary. Alabama has adopted §332 at Code of Ala. 1975, §40-18-8(h).

26 U.S.C. §381 provides, in part, that the acquiring corporation in a §332 distribution shall succeed to various tax attributes of the liquidated corporation, including the liquidated corporation's NOL carryover. Alabama has adopted §381 at Code of Ala. 1975, §40-18-35.1(6).

Sections 332 and 381 apply in this case. The Taxpayer correctly stated the Alabama law on the subject in its notice of appeal, as follows:

Our transaction was a taxable purchase of stock and than (sic) a corporate liquidation. The liquidation is controlled by 26 U.S.C. Section 332 which states no gain or loss is recognized on the liquidation. As for the NOL, 26 U.S.C. Section 381(a)(1) states that it applies to liquidations to which Section 332 applies. Section 381(c)(1) allows the carryover of NOLs to the acquiring corporation. The loss carryforward is also subject to the rules of Section 382 regarding the amount of NOL that can be used in any year. This transaction is not limited by Section 382 due to the fact that Tee Jays already owned at least 50% of the Shirt Depot stock prior to the transaction.

Because the Taxpayer was entitled to claim Shirt Depot's NOL on its 1999 consolidated return, the final assessment is voided.

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

Entered July 14, 2004.

BILL THOMPSON
Chief Administrative Law Judge