CC DICKSON COMPANY 456 LAKESHORE PKWY. ROCK HILL, SC 29730-4205,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
Taxpayer,	§	DOCKET NO. BIT. 09-238
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER

CC Dickson Company ("Taxpayer") appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. concerning a final assessment of 2007 business income tax. The case was submitted on agreed facts. Bob Riley represented the Taxpayer. Assistant Counsel Lionel Williams represented the Department.

The Taxpayer was a C corporation in 2007. It converted or changed to an S corporation, effective January 1, 2008. The S corporation election required the Taxpayer to recapture on its final federal 2007 C corporation return approximately $16 million in LIFO deductions it had taken in previous years. See, 26 U.S.C. §1363. The recapture resulted in additional federal tax due of $6,776,805. Federal law allowed the Taxpayer to pay the tax attributable to the LIFO recapture in four equal installments, beginning with the corporation's last return as a C corporation.

Code of Ala. 1975, §40-18-35(a)(2) allows corporations an Alabama income tax deduction for "[f]ederal income tax paid or accrued" during the taxable year. The Taxpayer deducted on its final 2007 C corporation Alabama return the entire amount of federal tax attributable to the LIFO recapture in 2007.

The Department disallowed that part of the federal income tax paid deduction that was not actually paid in 2007. The disallowed deduction resulted in the final assessment in

issue in this case.

As indicated, Alabama law allows a corporation to deduct all federal income tax "paid or accrued" during the tax year. See also, Department Reg. 810-3-35.01(1)(b)1. (Taxes . . . may be deducted for the taxable year in which paid or accrued, ..." "Accrue" is not defined by the Alabama Revenue Code, Title 40, Code 1975. The word is, however, generally defined as "[t]o come into existence as a claim that is legally enforceable." American Heritage Dictionary, Fourth Ed. at 9. Tax thus accrues when a taxpayer becomes legally liable to pay the tax, even if the due date is in the future.

The Taxpayer became legally liable in 2007 for the entire amount of the federal tax due resulting from the LIFO recapture in that year. Applying the plain language of §40-18-35(a)(2) and Reg. 810-3-35.01(1)(b)1., the Taxpayer is entitled to deduct in 2007 all of the federal tax attributable to the LIFO recapture that accrued in 2007, even though only 25 percent was due and payable in that year.

The Department argues that it would be unfair to allow the Taxpayer a full deduction. "The Department believes that utilizing the full accrued amount of federal LIFO recapture on the final C Corporation return would create an unfair deduction for federal income tax in relation to the income reported." Department' Answer at 1, 2. That may be, but the plain language of the statute must control, regardless of fairness or equity.

In *Alabama Dept. of Revenue v. Jim Beam Brands Company, Inc.*, ____ So.2d ____ (Ala. Civ. App. 2009), the issue was whether the taxpayer should compute its Alabama interest expense deduction using a "gross-income" factor in Code of Ala. 1975, §40-18-35(a)(2), as that statute read during the years in issue, or the general three-factor formula specified in a Department regulation. The Department argued that the three-factor formula

more fairly reflected the taxpayer's income attributable to Alabama. The Court rejected the argument, as follows:

> The Department also argues that the three-factor formula is the only method that fairly reflects the net income of the corporation attributable to Jim Beam's operations in Alabama, as required by the statute. However, such an argument appears to challenge the appropriateness of the method adopted by the legislature in §40-18-35(a)(2) for calculating interest-expense deductions, an issue not appropriately directed to this court. See, Jansen v. State ex rel. Downing, 273 Ala. 166, 168, 137 So. 2d 47, 48 (1962) ("all questions of propriety, wisdom, necessity, utility and expediency in the enactment of laws are exclusively for the legislature, and are matters with which the courts have no concern"). See also, DeKalb County LP Gas Co. v. Suburban Gas, Inc., 729 So. 2d 270, 276 (Ala. 1998) ("[I]t is our job to say what the law is, not to say what it should be.").

Jim Beam Brands, ____ So.2d at ____.

Likewise, the plain language of §40-18-35(a)(2) must be followed. The entire federal tax amount that accrued in 2007 must be allowed in that year.

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 June 9, 2009.

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BILL THOMPSON
Chief Administrative Law Judge

bt:dr
cc: Lionel C. Williams, Esq.
Bob Riley
Melody Moncrief