STATE OF ALABAMA,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE
V.	§	ADMINISTRATIVE LAW DIVISION
AMERICAN EQUIPMENT CO., INC. P. O. Box 688 Greenville, SC 29602,	§	DOCKET NO. L.85-105
Taxpayer.	§	

ORDER

This case involves a disputed lease tax preliminary assessment entered by the Revenue Department against American Equipment Co., Inc. (Taxpayer) for the period January 1, 1981 through December 31, 1983. A hearing was conducted in the matter on June 11, 1986. Representing the parties at said hearing were the Honorable M. R. Nachman, Jr., for the Taxpayer, and the Honorable Eddie Crumbley, for the Department. Based on the facts as presented at the hearing, and in consideration of the arguments and authorities presented by both parties, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

During the assessment period, Daniel International Corporation (Daniel), of which Taxpayer is a wholly-owned subsidiary, was involved in separate construction projects with Kimberly-Clark Corporation and Hammermill Paper Company (project owners). In connection with both projects, Daniel was appointed as agent for the project owner for the single purpose of purchasing all machinery, equipment and materials necessary for the project. Also under both construction contracts, Daniel was required to provide

the personnel and all small hand tools necessary for the performance of the contracts.

Concerning the small hand tools, both contracts provided that the project owner could either purchase the necessary tools, or, at the option of the owner, Daniel would provide the tools. On both projects, the owner elected for Daniel to provide the tolls, for which Daniel was paid or reimbursed by the owner an amount equal to seven percent of the direct labor costs as set out in the construction contracts.

Daniel procured the small hand tools used on each project through an informal agreement with the Taxpayer which required that the Taxpayer would supply Daniel with whatever tools necessary. Because of the parent/subsidiary relationship between Daniel and the Taxpayer, no formal lease agreements were executed.

The tools were periodically ordered by Daniel via a Daniel purchase order form. The printed form indicated that Daniel was acting as agent for the project owner. However, an added disclaimer was typed on the face of each form indicating that the order was being issued for accounting purposes only to establish payment for the tools under the prime contract between Daniel and the owner. The Taxpayer was paid weekly by check written directly from an account of the project owner. The testimony taken at the hearing indicated that the owner paid the Taxpayer directly only as a convenience to Daniel. That is, the account from which the Taxpayer was paid was established by the project owner to pay

Daniel for its labor and small hand tool expenses, but instead of paying Daniel for the tools and then having Daniel issue a check to the Taxpayer, to reduce paperwork, the Taxpayer was paid directly by the owner.

The Department's argument is that Daniel leased the tools from the Taxpayer as agent for the owners, and thus, the leases were between the Taxpayer and the project owners, not the Taxpayer and Daniel. If such was the case, the Department's assessment would be correct.

The Taxpayer's contention is that it leased the tools in question to Daniel, its parent corporation, and that the proceeds derived from such leases are thus exempt from lease tax under the provisions of Code of Alabama 1975, §40-12-223(11).

CONCLUSIONS OF LAW

Code of Alabama 1975, §40-12-223(11) reads as follows:

> There are exempted from the computation of the amount of the tax levied, assessed or payable under this article the following:
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> (11) The gross proceeds derived by the lessor, which term includes a sublessor, from the leasing or rental of tangible personal property when the lessor and lessee, which term includes a sublessee, are wholly-owned subsidiary corporations of the same parent corporation or one is the wholly-owned subsidiary of the other; provided, that the appropriate sales or use tax, if any was due, has been paid on such item or personal property; and provided further, that in the event of any subsequent subleasing of such tangible personal property to any person other than any such sister, parent or subsidiary corporation, any privilege or license tax due and payable with respect to such subsequent subleasing under the provisions of this article shall be paid.

There is no question that the Taxpayer is a wholly-owned subsidiary of Daniel. Thus, the determinative question is whether Daniel leased the small hand tools in issue in its own capacity, or in its capacity as agent for the owners. Under the facts of the case, it must be found that the leases were between the Taxpayer and Daniel, individually and not as agent for the owners, and consequently, that the lease proceeds derived by the Taxpayer are exempt from lease tax under the provisions of §40-12-223(11).

A key point in support of the above holding is that Daniel was appointed as agent by the owners for the purchase of materials and equipment, and was not empowered to enter into lease agreements on behalf of the owners. Further, under each contract Daniel, and not the project owner, was obligated to furnish the small hand tools necessary for completion of the project. Daniel fulfilled its obligation by leasing the tools from the Taxpayer.

The fact that Daniel purchase orders, which indicated an agency relationship between Daniel and the owners, were issued for the tools along with the fact that the Taxpayer was paid the leases were actually between the Taxpayer and the project owners, and assess tax accordingly. However, substance over form must govern in tax matters, Boswell v. Paramount T.V. Sales., Inc., 282 So.2d 892, and from the evidence taken at the hearing it is clear that the leases were in substance between the Taxpayer and Daniel. The form purchase orders were issued for accounting purposes only so

that the parties could keep up with how much was being spent on small hand tools. As to payment coming directly from the project owners, that was done at the request of and as a convenience to Daniel so as to avoid unnecessary paper work. Daniel was obligated to provide the tools in issue and it did so through lease agreements with the Taxpayer.

Based on the above, the Revenue Department is hereby directed to remove from the assessment that portion of the tax, interest and penalty that is based or computed on the lease proceeds in issue. The assessment should then be made final as adjusted.

Done this the 5th day of September, 1986.

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BILL THOMPSON
Chief Administrative Law Judge