

STATE OF ALABAMA,

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V.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

WENCO RESTAURANTS, LTD. §
6675 Peachtree Industrial Blvd.
Suite 101 §
Atlanta, GA 30360, §

DOCKET NO. INC. 85-134

Taxpayer.

ORDER

This matter involves a preliminary assessment of corporate income tax entered by the Revenue Department against Wenco Restaurants, Ltd. (Taxpayer) concerning the fiscal year ending November 30, 1981. A hearing was scheduled by the Administrative Law Division for November 5, 1985 in Room 425, Administrative Building, Montgomery, Alabama. Notice of said hearing was sent to the Taxpayer's representative, attorney Thomas E. Jones, Jr., by certified mail on September 18, 1985, the return receipt card showing receipt by the addressee on September 23, 1985. At the time and location set for the hearing, the Taxpayer failed to appear. The hearing proceeded, with assistant counsel Mark Griffin representing the Department. Based on the exhibits and testimony submitted at said hearing, the following findings of fact and conclusions of law are hereby made and entered.

FINDINGS OF FACT

On its Alabama foreign corporate income tax return for the fiscal year ending November 30, 1981, the Taxpayer excluded from apportionable income certain capital gains and interest income relating to the sale of property in North Carolina through which

the Taxpayer had operated several Wendy's restaurant franchises.

The Revenue Department examined the Taxpayer's return and determined that said capital gains and interest income was subject to apportionment as "business income" under the provisions of Department Regulation 810-3-31-.02. The Taxpayer's taxable income in Alabama was adjusted accordingly, resulting in the assessment presently in issue.

CONCLUSIONS OF LAW

The issue is whether the capital gains and interest income arising out of the sale of property by the Taxpayer in North Carolina was apportionable "business income" under Department Regulation 810-3-31-.02.

Code of Alabama 1975, §40-18-57 provides that the Revenue Department shall promulgate reasonable rules and regulations to govern the methods and procedures for determining gains and income.

Through Regulation 810-3-31-.02, the Department has adopted a reasonable method by which a multistate corporation's income is allocated and apportioned between the various states in which the corporation does business. "Business income", as defined in said regulation, is apportioned among and taxed in the various jurisdictions in which the corporation does business based on a three factor formula of sales, payroll and property. "Non-business income", which is also defined by the regulation, is allocated directly and entirely to one jurisdiction. Subsection (1)(a)6 of

Reg. 810-3-31-.02 relates to the sale of assets and provides in pertinent part that the sale of real property "constitutes (apportionable) business income if the property while owned by the taxpayer was used to produce business income".

In the present case, the property sold by the Taxpayer in North Carolina had been used by the Taxpayer in the operation of several restaurants. Clearly the property was used in relation to the production of business income. Accordingly, the capital gains and interest income resulting from the sale of said property was properly included by the Department as apportionable business income in computing the Taxpayer's Alabama income tax liability.

Based on the above, it is hereby found that the preliminary assessment as entered is correct and should be made final by the Department.

Done this 7th day of November, 1985.

BILL THOMPSON
Chief Administrative Law Judge