

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

v.

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DOCKET NO. INC. 85-146

THE HARRIS CORPORATION
P.O. Box 207
Decatur, AL 35072

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Taxpayer

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ORDER

This case concerns the payment to the State of Alabama by The Harris Corporation (hereafter "Taxpayer") for certain income tax due for fiscal tax year 1981. The Taxpayer having filed an application for refund, a hearing was held on December 16, 1985, to hear evidence and arguments concerning this assessment. At that hearing, the Taxpayer was represented by the Honorable Robert H. Harris and the Revenue Department was represented by Honorable Mark Griffin. Testimony was taken and other evidence was received in the form of documents all of which have been considered in making the following findings of fact and conclusions of law which are hereby entered.

FINDINGS OF FACT

It is clear from the pleadings and the evidence submitted that the Taxpayer is a corporation duly organized under the laws of the State of Alabama and doing business, at least for the period in question, in more than one state. During the period in question, the Taxpayer did business in the states of Massachusetts and Georgia and filed a state tax return for that period of time and

reflected thereon the income derived from its operations in those states. These tax returns (or relevant portions thereof) have been made a part of the Record in this case. In addition to filing these returns, it is clear that the Taxpayer paid with these returns an amount of tax due these states. Thereafter, a return was filed with the State of Alabama Department of Revenue Corporate Income Tax Section and a credit for the amount of tax paid to these states was requested by the Taxpayer. In effect, this request for a credit for that tax paid to these states was disallowed by the Revenue Examiner.

The tax and interest was paid and an application for refund was denied. After this denial, the Taxpayer waited for the outcome of Burton Manufacturing Company, Inc. vs. State, 469 So.2d 620 (Ala. Cir. App. 1985) before the appeal to the Administrative Law Division was consummated.

The Taxpayer contends that the corporate tax paid to the State of Massachusetts is a corporate income tax and thus a credit should have been allowed for that tax pursuant to Code of Alabama, 1985 §40-18-21. The Department of Revenue's contention is that this tax paid to Massachusetts is not an income tax as required by §40-18-21, supra, and therefore the credit was properly disallowed.

The evidence presented from the Department of Revenue came in the form of testimony from Mr. Bill Norwood who testified that in his opinion corporate business tax was not an income tax but was

really an excise tax (R. 13). An attempt was made to explain the difference between the tax imposed by Massachusetts and that imposed by Georgia. The Taxpayer presented physical evidence in support of his argument that this was, in fact, an income tax and therefore allowable under §40-18-21. A part of that physical evidence presented by the Taxpayer contains a copy of the Massachusetts return which shows a breakdown of the amount of tax paid. In addition, the Taxpayer called as a witness Mr. Marvin Ellis who testified as to how the taxes were calculated for the returns filed by the Taxpayer in both Massachusetts and Georgia.

CONCLUSIONS OF LAW

It is clear that the Alabama legislature pursuant to §40-18-21, supra, has provided for a credit for taxes paid on income from sources outside of the State of Alabama. While that general fact is clear from a reading of the statute, that reading does not provide us with a clear definition of the term "income tax". Section 40-18-21(a) indicates that a credit should be allowed for an Alabama resident "on account of income derived from without the State of Alabama for the amount of income tax actually paid by such resident to any state or territory on account of business transacted or property held without the State of Alabama".

The evidence in this particular case indicates that both sides involved were relying on the outcome of the Burton Manufacturing Company, Inc. v. State, supra. This being the case, it appears

that the Burton case is the best authority available for the interpretation of §40-18-21. Therein, the Court was faced with an interpretation exactly like the one presently being considered except that the foreign statute involved was that of Florida instead of Massachusetts. It appears that the Court had similar obstacles as are present here in that the Florida legislature in enacting the statute had called the statute a tax for the purpose of taxing the to privilege of conducting business" in the State of Florida. A review of the Florida Statute and other relevant documents clearly indicates that the statute had been called a franchise tax or a privilege tax and/or an excise tax.

In the case at bar, the Department of Revenue maintains the position that the Massachusetts tax is a franchise tax or excise tax and not an income tax. The Department cites numerous cases in its brief in support of its position that Massachusetts intended for this tax to be excise, privilege or franchise tax and not income tax. These cases have been read and considered and they give great support to the Department's position. If the foreign state's characterization of the tax was the test, it would seem clear that this decision would be made in favor of the Department.

However, because of Burton, supra, it does not appear that such is the test. (In enacting the statute reviewed by the Court in Burton, the Florida legislature specifically stated in Title XIII §220.03 that this tax was an "excise or privilege tax" yet regardless, the

Court construed it as an income tax for the purposes of a credit under §40-18-21).

The Taxpayer likewise cites numerous cases which have been read and considered. In addition it has provided for consideration, a voluminous appendix containing all the appellate briefs of both sides in Burton, supra. Besides these briefs, the Taxpayer has provided numerous Department of Revenue memoranda and correspondence which it contends shows that the same argument made here was made in Burton and for that reason the argument must fail.

While such clearly appears to be relevant, it does not appear to be conclusive of the ultimate issue.

All of the above would be of greater importance if it were not for one matter which has now been judicially determined by the Alabama Courts. Prior to the Burton decision, it is clear that there was "no definition of the term 'income tax' anywhere in Title 40 . . ." nor were there any Alabama cases "that have defined the term 'income taxes'". Burton, supra. However, the Alabama Court of Civil Appeals in Burton clearly adopted the definition of income tax as contained in §40-27-1 of the Code of Alabama, 1975 which is as follows:

"Income tax means a tax imposed on or measured by net income including any tax . . ."

This definition is specifically applied to interpretations such as this of §40-18-21 in regard to foreign tax paid. This definition is clearly adopted by the Court for this purpose.

While the Court in Burton goes on its analysis of the Florida Statute, it seems clear that the adoption of the definition of "income tax" as stated above is the one controlling factor. While characterization of the foreign tax by the foreign legislature was considered, the key question was and seems to be now; Is the foreign tax a tax imposed on or measured by net income?

In applying this question to the tax paid by the Taxpayer in Massachusetts, it seems clear that it was in fact measured, at least in part, by net income. This is uncontradicted by the evidence as the tax return filed by the Taxpayer shows without question that the tax paid in Massachusetts was paid because of income derived in that state. In addition, witness Ellis verified that fact and Mr. Norwood admitted that the tax was measured by income (at least in part).

Considering the evidence presented as well as that law given for consideration, it must be concluded that the tax paid by the Taxpayer to Massachusetts for the period in question was a tax "imposed on or measured by" net income. For that reason, it appears that the portion of the tax paid to the State of Massachusetts (for the period in question) which was based on income should have been allowed as a credit against Alabama Income Tax due for the same period. Since a calculation of that amount indicates that it is in excess of the tax liability paid to the State, it seems clear that the full refund should have been allowed.

For these reasons, it is ordered that a full refund of the amount claimed by the Taxpayer was and is due to be granted and repaid to the Taxpayer together with any interest accrued (if any) according to Alabama law.

This decision was prepared by James F. Hampton, Acting Administrative Law Judge, on this the 17th day of February, 1986.

JAMES F. HAMPTON
Acting Administrative Law Judge