STATE OF ALABAMA DEPARTMENT OF REVENUE,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
v.	§	DOCKET NO. INC. 85-174
THE KNOTHE CORPORATION P. O. Box 416 Ashford, AL 36312,	§	
Taxpayer.	§	

ORDER

This case concerns the payment to the State of Alabama by The Knothe Corporation (hereafter "Taxpayer") for certain income tax due for the calendar year 1983, the Taxpayer having filed a tax return for that period and claiming a credit for certain taxes paid in the State of New York and the City of New York. A hearing was held on July 22, 1986, to hear evidence and arguments concerning the assessment preliminarily made on February 20, 1985, by the Department o f Revenue. At that hearing, the Taxpayer was represented by the Honorable Clifford E. Massey, CPA, and the Revenue Department was represented by the 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 New York and Alabama and filed an Alabama State tax return for that period of time and reflected thereon the income derived from its operations in those states. These tax returns (or certain portions thereof) have been made a part of the Record in this case. In addition to filing an Alabama return, it is clear that the Taxpayer filed a return for the State of New York and paid with that return an amount of tax apparently due the State of New York and the City of New York. The return filed with the State of Alabama Department of Revenue, Corporate Income Tax Section, showed a credit claimed for the amount of tax paid to New York State. and the City of New York. In effect, this claim for a credit was disallowed by the Revenue Examiner and an assessment was made.

The Taxpayer contends that the corporate tax paid to the State of New York and the City of New York 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 neither the tax paid to New York State nor New York City is an income tax which warrants the credit claimed under §40-18-21, supra.

The evidence presented from the Department of Revenue came in the form of testimony from Mr. Bill Norwood. Mr. Norwood's testimony was limited to the breakdown of the credit claimed by the

Taxpayer, and specifically what amounts were attributable to the City of New York and what amounts attributable to the State of New York. The Taxpayer presented physical evidence in support of his argument that the tax paid to the State of New York was, in fact, an income tax and therefore an allowable credit under §40-18-21. A part of that physical evidence presented by the Taxpayer contains a copy of the New York State "Corporate Franchise Tax Report" (or a part thereof), which shows a breakdown of the amount of tax paid.

CONCLUSIONS OF FACT

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". Any existing ambiguity or misunderstanding of the term "income tax" for the purpose of a credit under §40-18-21(a) has now been resolved, at least to the satisfaction of this Court, by the decision in Burton Manufacturing Company, Inc. v. State, 469 So.2d 620 (Ala.Civ.App.,

1985) and the decision by this Administrative Court in State v. The Harris Corporation, Inc., Docket No. 85-146, decided February 17, 1986. This is not to say that in each case presented (where the payment of different states' taxes serve as the basis for the claim for credit under §40-18-21, supra) that there is no need for some type of judicial review. However, the New York State Tax now under consideration is very similar to that tax reviewed in Harris, supra. Additionally, the representative of the Department of Revenue concedes that the Burton, supra, decision and the Harris, supra, decision are controlling.

Perhaps the above would be determinative of the ultimate decision in this matter if it were not for the apparently novel position take n by the Department of Revenue to the effect that the Multistate Tax Compact was never made effective and/or in the alternative, if it was, then the compact disallows any credit under §40-18-21. While the undersigned is impressed with the logic, reasoning and research done in making such an argument, it appears that counsel for the Department of Revenue is asking the undersigned to overrule or at least ignore the decision of the Alabama Court of Civil Appeals in Burton, supra. While the exact duty of and authority of this Administrative Court is somewhat unclear, it does seem clear that it does not have the authority to overrule the Alabama Court of Civil Appeals. Such is certainly something that the undersigned is not willing to do.

Regardless, this Court specifically finds that it was not necessary (without making a decision either way) for the Multistate Tax Compact to be "in effect" in order for the Court of Civil Appeals to adopt its definition of "income tax" from §40-27-1. This Court finds that the definition of "income tax" found in Burton, supra, controls this case regardless of whether the Multi-state Tax Compact was ever properly enacted. For these reasons, the Burton and Harris decisions are determinative of the ultimate issue in regard to the credit claimed by the Taxpayer for taxes paid to New York State for 1983.

However, for that portion of the credit claimed by the Taxpayer for taxes paid to New York City, this Court must reach a different conclusion. It appears clear that the credit allowable under @40-13-21 is only applicable to taxes paid ". . . to any state or territory. . . " on account of business transacted without the State of Alabama. This Court cannot construe that portion of §40-18-21(a) quoted above to apply to a tax paid to a city such as the City of New York. The City of New York does not fit within this Court's understanding of the definition of either a state or a territory. This is a finding which is supported by the Department of Revenue's argument and general authority found therein. Also, it appears that this is a finding which is not disputed by the Taxpayer as there has been no argument to support a position that the credit should have been allowed for the foreign

tax paid to New York City.

Thus, the only remaining matter which needs to be addressed is the matter concerning the amount of the credit claimed by the Taxpayer that should be allowed. The evidence of the record on this matter is limited as the exhibits admitted do not clearly show how much of the foreign tax paid was paid to the City of New York. The only clear evidence in regard to this matter is the testimony of witness Bill Norwood, who indicated that the Taxpayer should have only been allowed a credit for the tax paid to the State of New York (an opinion which is in agreement with the findings of this Court above) and therefore, the allowable credit was limited to an amount of $3,799.35 instead of that amount claimed by the Taxpayer of $7,174.00.

Based on this undisputed testimony, the Court finds that the Taxpayer's credit pursuant to §40-18-21(a) claimed on his 1983 Alabama Tax Return in the amount of $7,174.00 is disallowed to the extent that it is reduced to $3,799.35 consistent with the conclusions reached herein.

It is therefore ordered that the Department of Revenue issue an amended or new assessment consistent with this opinion which indicates the amount of tax owed by the Taxpayer for the calendar year 1983, together with interest owed, if any, under Alabama Law. From that amended or new assessment, either party may appeal.

This decision was prepared by James F. Hampton, Acting

Administrative Law Judge, on this the 12th day of December 1986.