

STATE OF ALABAMA
DEPARTMENT OF REVENUE,

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

v.

§

DOCKET NO. INC. 87-243

JOE L. AND ANN B. GRIFFIN
5307 Woodford Drive
Birmingham, AL 35243,

§

§

Taxpayers.

§

ORDER

The Revenue Department entered preliminary assessments of income tax against Joe L. and Ann B. Griffin ("Taxpayers") for the years 1984 and 1985. The Taxpayers appealed to the Administrative Law Division and a hearing was conducted on January 10, 1989, Mr. Grant McDonald appeared on behalf of the Taxpayers. Assistant counsel Mark Griffin represented the Department. Based on the evidence presented in the case, the following findings of fact and conclusions of law are hereby entered.

FINDINGS OF FACT

The issue to be decided is whether the Taxpayers should be allowed a credit against their Alabama individual income tax for income tax paid in 1984 and 1985 to the States of Illinois, Colorado and Missouri. The Alabama credit section is Code of Ala. 1975, §40-18-21.

Joe Griffin was a majority stockholder in NASCO Sales and Service, Inc. ('Nasco') during the subject years. Nasco filed a regular foreign corporation return with Alabama in 1984 and a subchapter "S" corporate information return in 1985. Subchapter

"S" returns were first allowed in Alabama in 1985. Nasco also filed "S" returns in Illinois, Colorado and Missouri in both years. Regular corporate returns were filed in various other states in which Nasco did business.

The Taxpayers filed joint individual income tax returns in Alabama in both 1984 and 1985. The 1984 return included the dividends received from Nasco. The 1985 return included that percentage of Nasco's income attributable to Alabama' and passed through to the Taxpayers, and also the dividends received by the Taxpayers from Nasco. The Taxpayers also filed returns in Illinois, Colorado and Missouri and reported and paid tax on the percentage. of Nasco's income attributable to each of those respective states.

The Taxpayers claimed a credit on their Alabama returns in both 1984 and 1985 under §40-13-21 for the taxes paid to Illinois, Colorado and Missouri. The Department disallowed the credits and entered the preliminary assessments in issue. The Taxpayers timely appealed to the Administrative Law Division.

CONCLUSIONS OF LAW

Code of Ala. 1975, §40-18-21 provides a credit against Alabama tax for taxes paid by residents of Alabama to a foreign state on account of business transacted or property held outside of Alabama.

The credit is allowed to relieve a taxpayer from the burden of double taxation. State v. Robinson Land and Lumber Company, 77

So.2d 641. An Alabama resident should not be required to pay income tax in Alabama on income derived from out-of-state sources on which tax has been paid to the foreign state.

The Taxpayers argue that to disallow a credit for the taxes paid to Illinois, Colorado and Missouri would result in double taxation. To illustrate, the Taxpayers offer a hypothetical whereby a subchapter "S" corporation operates in Alabama and Georgia. The corporation's income is \$100,000.00, allocated equally between the two states. The taxpayers, as sole shareholders of the corporation, must report \$50,000.00 in Georgia and \$50,000.00 in Alabama as apportioned taxable subchapter "S" income. The taxpayers must also report an additional \$50,000.00 in Alabama as a dividend received from the corporation (\$100,000.00 actually received less \$50,000.00 already reported as "S" income).

The Taxpayers contend that if a credit is not allowed for the taxes paid to Georgia, then the income received by the taxpayers would be taxed twice.

However, §40-18-21 allows a credit against Alabama tax for income taxed in Alabama which is attributable to out-of-state sources. If the income taxed in Alabama is attributable to Alabama or has Alabama as its source, then no credit should be allowed.

In the present case, the Taxpayers were taxed in Alabama on (1) that portion of Nasco's income which was attributable to (derived

from) Nasco's Alabama activities, and (2) the dividends received by the Taxpayers from Nasco stock. The "S" income passed through to the Taxpayers is clearly attributable to Alabama. The dividend income is also attributable to Alabama in that such intangible income follows the situs of the stockowners. Miller v. McColgan, 110 P.2d 419. See also Code of Ala. 1975, §40-18-14(3), which includes as Alabama gross income all income from "intangible personal property owned by or held anywhere within or without the state of Alabama for the account of any resident or domestic corporation." Consequently, the dividend income reported by the Taxpayers was not derived from business transacted or property held without the state", and thus no credit should be allowed.

A similar result was reached in Christman v. Franchise Tax Bd., (of Cal.), 134 Cal.Rptr. 725 (1975). In that case, a California resident sought a credit against his California personal income tax for taxes paid to Georgia. The California statute, §18001, is similar in substance to §40-18-21. As in the present case, the Georgia tax paid by the individual taxpayer was based on income of an "S" corporation which was passed through and taxable to the taxpayer. The court ruled that the dividends were California source income, and thus that the taxpayer should not be allotted a credit. The adopted by the court is as follows:

The board agrees that by well-settled California law when income springs from the ownership of stock the stock itself is deemed the immediate source of that income.(Miller v. McColgan, supra, 17 Cal.2d at 437, 110

P.2d 419.) In the instant case, the source of Christman's income is the stock since it is only through its ownership that he has any claim to the money he received, and the remaining inquiry is the "location" of this intangible. To establish a California situs the board relies on the maxim mobilia sequuntur personam, long adhered to in California. (e.g., Pacific Telephone & Telegraph Co. v. Franchise Tax Board, 7 Cal.3d 544, 547-548, 102 Cal.Rptr. 782, 498 P.2d 1030; Safeway Stores, Inc. v. Franchise Tax Board, 3 Cal.3d 745, 749, fn. 3, 91 Cal.Rptr. 616, 478 P.2d at 439, 110 P.2d 419.) In locating intangibles at the domicile of their owner, mobilia operates here to place the stock, the source of the income, in California, Christman's domicile, with the result that the income was derived in this state. Section 18001 §40-18-21) is consequently inapplicable since there are no credit provisions relating to foreign taxes paid on income with a California source. (emphasis added).

The above decision is supported by Department Reg. 810-3-162-.01. Subsection (4) of that regulation provides that "[N]o credit for income taxes paid [to] other states [as] provided in §40-18-21 is allowable with respect to a shareholder's pro-rata share of an Alabama S corporation's income. The reason given is that an Alabama "S" corporation reports only income apportioned or allocated to Alabama and thus includes no income from out-of-state sources.

The above considered, the assessments in issue are correct and should be made final, with applicable interest as required by Alabama law.

Entered this 6th day of April, 1989.

BILL THOMPSON
Chief Administrative Law Judge