



A Survey of Recent and Pending Alabama Tax Cases Involving the Commerce Clause

By Bruce P. Ely, Christopher R. Grissom and Ashley G. White

This article summarizes the major cases that have recently come before, or are currently pending before, the Alabama appellate courts addressing the constitutionality of certain Alabama state and local taxes. More specifically, this article will focus on those cases addressing state and local tax levies or exemptions as they relate to the Commerce Clause of the U.S. Constitution. Some of the cases have been finally decided, while others are in varying stages of litigation. They are noteworthy because they represent a clear shift by the Alabama courts toward adopting relatively recent U.S. Supreme Court guidelines involving state taxing schemes and the Commerce Clause.

There are three underlying themes that can be gleaned from the following cases: (1) the Alabama courts, like most courts, prefer to decide tax cases on non-constitutional grounds; (2) the Alabama courts are following U.S. Supreme Court precedent that in recent years has found several state taxing schemes to be facially discriminatory under the Commerce Clause, including shifting the burden of proving the tax scheme to be constitutional to the taxing authorities once the taxpayer has proved facial discrimination¹; but (3) the Alabama courts are not yet in agreement as to the appropriate remedy for those plaintiffs, and other similarly-situated taxpayers, wronged by an unconstitutional tax scheme.



State Department of Revenue v. Hoover, Inc.

In a case involving the constitutionality of *Alabama Code* section 40-23-4(a)(11), Alabama’s sales/use tax² exemption for purchases by the State of Alabama and its counties and municipalities, the trial court initially ruled in favor of the Alabama Department of Revenue (the “Department”). The taxpayer, Hoover, Inc., appealed to the Alabama Court of Civil Appeals, which affirmed the trial court’s decision (*Hoover I*).³ The Alabama Supreme Court reversed, finding the Alabama “governments-only” exemption constituted facial discrimination in violation of the Commerce Clause, and remanded the case to the trial court, giving the Department an opportunity to present its justification defense for the discriminatory exemption. On remand, after a full evidentiary hearing to explore possible justifications for the discriminatory exemption, the circuit court ruled in favor of the taxpayer. The Department appealed to the court of civil appeals, which eventually reversed the trial court in favor of the Department. In *Hoover II*⁴, the case once again came before the Alabama Supreme Court on appeal from the decision of the court of civil appeals, and the Alabama Supreme Court again held the statute violated the Commerce Clause.

In reaching its decision in *Hoover II*, the court examined the Department’s evidentiary justification for the discriminatory

impact created by the sales tax exemption. The sole justification offered by the Department on remand from *Hoover I* was “administrative convenience,” i.e., that the tax exemption afforded Alabama local governments “mitigates the administrative costs of an Alabama governmental entity having to pay sales tax to the state, and then having the state refund and disburse a portion, if any, of the tax right back to the Alabama entity to fund various governmental functions.”⁵ The court held that the Department’s mere discussion of the “administrative convenience” justification was not sufficient to satisfy the Department’s heavy burden under the “virtually per se invalidity” standard for facially discriminatory tax schemes. As then Chief Justice Drayton Nabers emphasized, at no point in the appeals process did the Department offer any evidence of how its purported justification advances a legitimate local purpose that could not be adequately served by reasonable non-discriminatory alternatives—as is required by U.S. Supreme Court precedent. The court held that the Department simply failed to carry this burden from an evidentiary standpoint. The court added, however, that even if the administrative convenience justification had been properly supported, that alone was insufficient to save a facially discriminatory tax.

The closest the Department came to making such an argument, according to the court, was the last sentence of its appellate brief

in which the Department argued that if the court “reversed the judgment of the court of civil appeals, the loss of sales tax revenues will increase the financial strain on a state already in crisis.”⁶ Nonetheless, the court held this “bare allegation alone” was not sufficient in light of the “heavy burden” when attempting to justify a facially discriminatory tax and remanded the case to the lower courts.⁷

The court of civil appeals construed the remand order, in light of the taxpayer’s arguments, that it was to affirm the trial court’s 2003 ruling from *Hoover I* and ordered a full refund, which the taxpayer received last year.

Also last year, in *Hoover III*⁸, the court of civil appeals affirmed a circuit court ruling in favor of the taxpayer based on the doctrine of collateral estoppel. The appeal involved the Department’s subsequent tax assessment against Hoover, covering the period May 2000 through April 2003, on the very same issue. After the final adjudication of *Hoover II* (covering the period July 1996 through June 1999), the taxpayer filed for summary judgment in *Hoover III* contending, among other things, that the doctrine of collateral estoppel barred the subsequent assessment. The Department argued that collateral estoppel did not apply because the case at hand involved different tax years and different tax assessments (in amount).

Additionally, the Department argued that section 40-23-4(a)(11) does not facially discriminate against interstate commerce based on the recent U.S. Supreme Court decision in *United Haulers Ass’n, Inc., v. Oneida-Herkimer Solid Waste Mgmt. Auth.*⁹ *United Haulers* held that flow-control ordinances requiring private trash haulers to deliver solid waste to a government-operated waste processing facility did not discriminate against interstate commerce. The Court refused to apply the Department’s expanded rationale because of distinguishable characteristics between the *United Haulers* flow control ordinance and the tax exemption at issue. Moreover, the Court stated that, “in the absence of a directly contrary United States Supreme Court decision, [Alabama state courts] are bound by

Among other challenges raised, VFJ’s primary constitutional argument was that the add-back statute, on its face, discriminates against those businesses choosing to locate in low or no tax jurisdictions, such as Delaware or Nevada.

the decisions of the Alabama Supreme Court”¹⁰ In the instant appeal, the court was bound by *Hoover II*.

The court held that “the doctrine of collateral estoppel can apply to tax cases involving different tax years if the same issues were actually presented and determined in the first action, and the controlling facts and applicable legal rules remain unchanged.” In a unanimous opinion, the court held that all the elements of collateral estoppel were present and “that collateral estoppel bars the Department from re-litigating against Hoover the issue whether a sufficient justification exists for a tax scheme that the Alabama Supreme Court has held to be ‘facially discriminatory’ against interstate commerce, and hence, whether a tax assessment can be assessed against Hoover.”¹¹

The Alabama Supreme Court recently granted *certiorari* in *Hoover III* regarding the potential applicability of *United Haulers* and also requested that the parties brief the Department’s previously rejected argument that a number of other

states have similar sales tax exemption schemes—that favor in-state local governments while affording no exemption to out-of-state local governments. The parties are now awaiting the court’s ruling.

VFJ Ventures, Inc. v. Surtees

In *VFJ Ventures, Inc. v. Surtees*,¹² a case challenging, among other issues, the constitutionality of Alabama’s so-called “add-back statute,” the Montgomery County Circuit Court ruled in favor of VFJ Ventures, Inc. in what is believed to be the first reported case challenging the validity of an add-back statute. The Montgomery County Circuit Court did not rule on the constitutionality of the statute, however, but instead held on much narrower grounds that the taxpayer could deduct its royalty payments made to two related intangibles management companies (“IMCOs”) headquartered in Delaware because, under the statute, it was “unreasonable” to require the disallowance of those payments as deductions. In so holding, the Montgomery County Circuit Court determined that VFJ’s royalty payments were not abusive and disallowing the deductions would have caused distortion of VFJ’s Alabama income. The ruling was dependent upon the strong facts supporting the business purpose and economic substance of the IMCOs and the court’s acceptance of VFJ’s distortion argument.

Alabama’s add-back statute, enacted in 2001, was retroactively effective for tax years beginning after December 31, 2000 and requires taxpayers to “add-back” otherwise deductible interest expenses and intangible expenses (related to intangibles such as trademarks or patents) directly or indirectly paid to a related entity. The payments may be exempted from the statute if the taxpayer-payor can prove any of the following: (i) the corresponding item of income was in the same taxable year subject to a tax, in the United States or by a foreign nation which has in force an income tax treaty with the United States, based on or measured by the

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payee-related member's net income, and not offset or eliminated in a combined or consolidated return which includes the payor; (ii) adding back (disallowing) the expense is "unreasonable;" or (iii) the payee-related member is not "primarily engaged" in the prohibited activities of managing, acquiring or maintaining intangible property or related party financing *and* the principal purpose of the transaction was not avoidance of Alabama income tax.

Among other challenges raised, VFJ's primary constitutional argument was that the add-back statute, on its face, discriminates against those businesses choosing to locate in low- or no-tax jurisdictions, such as Delaware or Nevada. The practical effect of this discrimination, VFJ argued, is to coerce businesses to locate their activities in either Alabama or, at a minimum, in another separate return state (as opposed to a combined or consolidated reporting state) to avoid the disallowance of valid interest or royalty expenses. Under the subject-to-tax exception as interpreted by the Department, a royalty payment will be "subject to a tax" only when it is included on a separate income tax return by the recipient, but not when it is "offset or eliminated in a combined or consolidated return which includes the payor." If the payor and the recipient IMCO are both located in a particular state and pay tax to that state by filing separate tax returns, the subject-to-tax exception allows the payor to avoid add-back in Alabama.

If that state were, however, a combined reporting state, the payor and IMCO likely would file a combined return on which the transactions between the payor and the related IMCO would be netted against each other or eliminated (i.e., ignored). The

two entities would pay income tax to the combined reporting state based on the *same* total income—but the subject-to-tax exception would *not* apply. Thus, VFJ argued, the add-back statute discriminates, on its face, against combined reporting and consolidated return states and impedes the free flow of interstate commerce by giving Alabama taxpayers an incentive to locate IMCOs in separate return states, including Alabama. A tax scheme that operates to favor intra-state business over interstate business or that imposes negative tax consequences based on whether a business's activities are interstate versus intra-state discriminates against interstate commerce in violation of the Commerce Clause—and is "virtually per se invalid" according to U.S. Supreme Court precedent.

The Department appealed the trial court's decision to the court of civil appeals. The parties have completed briefing and are now awaiting a ruling. Both the Alabama Education Association and the Multistate Tax Commission filed *amicus* briefs in favor of the Department.

AT&T Corp. v. Surtees

In *AT&T Corp. v. Surtees*,¹³ the court of civil appeals held that the deductions from the net worth base for the Alabama business privilege tax ("BPT") and corporate shares tax ("CST"),¹⁴ that were limited to only those investments in entities *doing business in Alabama*, were a facially discriminatory violation of the Commerce Clause. Furthermore, the court held once again that

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when facial discrimination was proven, the burden of proof for justifying the deduction scheme shifts to the Department.

Alabama Code section 40-14A-33(b)(2) (now repealed) allowed corporations paying the CST to deduct from their tax base the book value of an investment by the taxpayer in the equity of other corporations doing business in Alabama, while section 40-14A-23(g)(1) allowed a corporation or other entity to deduct from its BPT base the book value of an investment in the equity of any other taxpayer doing business in Alabama.¹⁵ The court held that the deductions from Alabama's BPT and CST deduction schemes are based on whether the entity in which the taxpaying corporation invested does business in state or out of state. Accordingly, the court held "[t]his differential treatment encourages, to an extent, domestic corporations subject to the BPT and the CST to invest in entities that do business in Alabama, at the expense of entities that do not do business in Alabama. On their face, the statutes at issue impose a heavier tax burden if the entity, in which the taxpaying corporation has invested, does not do business in Alabama."¹⁶ Thus, the court held that the BPT and CST deduction schemes were facially discriminatory and the burden of justification fell on the Department.

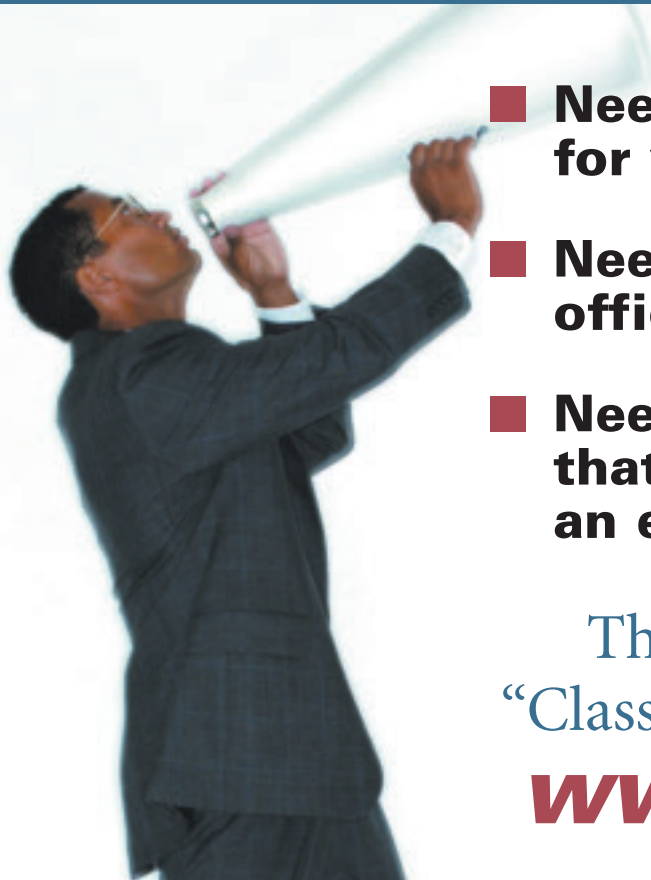
In its original opinion, the court evaluated the Department's proffered justification for the discriminatory deduction schemes—preventing double taxation of in-state investments. The Department's defense was found insufficient, and the court ordered full refunds for AT&T. However, on application for rehearing filed by the Department, the court issued a substituted opinion which concluded, after again classifying the deduction schemes as facially discriminatory and clarifying that the Department has the burden of

demonstrating the validity of the schemes, that the case should be remanded to the trial court for consideration of whether the Department had met its burden of proof.

Lanzi v. State Dep't of Revenue

In *Lanzi v. State Dep't of Revenue*,¹⁷ the court of civil appeals held that the Due Process Clause of the U.S. Constitution prohibits Alabama from taxing nonresident limited partners of Alabama investment partnerships on their allocable share of partnership income if they have no other connection with Alabama. The court pointed out, however, that the years in question pre-dated the non-resident partner/member income tax withholding statute enacted by the Alabama Legislature in 2001.¹⁸

Mr. Lanzi resided in Atlanta, Georgia during the years in question. He owned a limited partnership interest in a family investment limited partnership, organized under the Alabama Limited Partnership Act, which had an office at Lanzi's parents' residence in Birmingham. Lanzi paid Georgia income tax on his distributive share of the partnership's income from its portfolio of marketable securities. Nonetheless, the Department assessed Lanzi for failing to pay income tax to Alabama on that income. Of importance is the fact that three Alabama courts found that Lanzi owned no property, conducted no business and had no economic ties to Alabama other than his limited partnership interest. Initially, the Department's Chief Administrative Law Judge, in a comprehensive 20-page opinion, agreed with the taxpayer and *amici*, the Alabama Society of CPAs, that Lanzi was not subject to Alabama income tax.



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The Department appealed that ruling to the Montgomery County Circuit Court, which reversed the Administrative Law Division and upheld the Department's assessment, without addressing either the Commerce Clause or Due Process Clause issues.

On Lanzi's appeal, the court of civil appeals reversed, noting that under the Due Process Clause, in order for a state to exercise jurisdiction over a nonresident taxpayer, that taxpayer must have sufficient minimum contacts with the taxing state. Although the physical presence of the taxpayer in the taxing state is not required under the Due Process Clause, according to the court, the income that a taxpayer receives from intangible personal property is generally taxable in the taxpayer's state of residence (here, Georgia). The court compared a nonresident's interest in a limited partnership to a nonresident's ownership of stock in a corporation, which, without more, does not subject the nonresident limited partner to the state's taxing jurisdiction. Thus, the court held that the mere ownership of a limited partnership interest does not provide sufficient minimum contacts with the forum state for the state to exercise jurisdiction. The court did not address the taxpayer's alternative argument that the Commerce Clause was also implicated. The Alabama Supreme Court recently denied the Department's petition for a writ of *certiorari* and the Department did not petition the U.S. Supreme Court for review.

It is likely that compromise legislation will be introduced during the 2008 regular session to codify and perhaps somewhat limit the scope of *Lanzi* to so-called "qualified investment partnerships."

Vulcan Lands, Inc. v. Surtees

In *Vulcan Lands, Inc. v. Surtees*,¹⁹ a case concerning what remedy, if any, is due a foreign corporation that remitted franchise tax payments pursuant to Alabama's now-defunct corporate franchise tax scheme, the Alabama Court of Civil Appeals reversed the Montgomery County Circuit Court in part by holding that Vulcan Lands, Inc. ("VLI") was not required to establish that it had any in-state domestic competitors in order to be entitled to a refund. However, the court also held that there was a genuine issue of material fact as to whether VLI was entitled to a refund due to the so-called "reliance and hardship" defense argued by the state. The court remanded the case to the circuit court to make that determination.

Prior to 1999, Alabama employed different methods to calculate the franchise tax liability of domestic and foreign corporations: domestic corporations (i.e., those incorporated in Alabama) were required to pay a franchise tax based on the par value of their capital stock while foreign corporations were required to pay a franchise tax based on the actual capital that they employed in the state. The U.S. Supreme Court in *South Central Bell Telephone Co. v. Alabama*²⁰ unanimously held that the Alabama franchise tax scheme was unconstitutional and facially discriminated against interstate commerce because foreign and domestic corporations were taxed differently based solely on their state of incorporation.

After the supreme court rendered its decision in *South Central Bell*, VLI, a New Jersey corporation, petitioned for a refund of its 1999 foreign franchise tax payment. VLI maintained that the only



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way Alabama could comply with its obligation to provide meaningful backward-looking relief was by awarding refunds to previously disfavored foreign corporations like itself.

The Department conceded that Alabama's previous franchise tax scheme was unconstitutionally discriminatory inasmuch as it resulted in foreign corporations generally paying more in franchise taxes than their domestic counterparts. Nonetheless, the Department argued, and the circuit court agreed, that Alabama was not required to refund *any* portion of the franchise tax payment remitted by VLI because VLI did not prove that it had any in-state domestic corporation competitors, which meant that VLI had not established that it was discriminated against or injured by Alabama's unconstitutional franchise tax scheme.²¹

On appeal, however, the court of civil appeals held that the cases relied upon by the circuit court in requiring proof of a domestic competitor were distinguishable. The court of civil appeals held that "because the holding of the United States Supreme Court in *South Central Bell Telephone Co. v. Alabama* established, as a matter of law, that Alabama's franchise-tax scheme discriminated against VLI, VLI was not required to prove that it had a domestic competitor who was favored by Alabama's franchise-tax scheme in order to establish its right to a refund."²² To rule otherwise would mean each taxpayer must re-litigate the discriminatory tax scheme to pursue its refund claim.

The court next addressed the appropriate remedy due to VLI. The court noted that the Alabama Supreme Court in *South Central Bell*, on remand from the U.S. Supreme Court, opined that a state may meet the requirements of due process resulting from an unconstitutional state tax scheme by one of five means: (1) refunding the tax; (2) collecting back taxes from the favored

...a state may meet the requirements of due process resulting from an unconstitutional state tax scheme by one of five means:

- 1. refunding the tax;**
- 2. collecting back taxes from the favored class;**
- 3. a combination of (1) and (2);**
- 4. refusing a refund to a taxpayer that did not follow the state's procedural law with respect to refunds; or**
- 5. "refusing to give a remedy in the rare case in which the state relied on now overturned precedent and the state now faces an extreme hardship if it must give a remedy."**

class; (3) a combination of (1) and (2); (4) refusing a refund to a taxpayer that did not follow the state's procedural law with respect to refunds; or (5) "refusing to give a remedy in the rare case in which the state relied on now overturned precedent and the state now faces an extreme hardship if it must give a remedy."²³ In this case, the Department elected not to collect back taxes from the favored class and VLI had followed Alabama procedural requirements with regard to refund claims. As such, the Department is required to either give VLI a refund or prove that it relied on overturned precedent and that the state would face an extreme hardship if it must give VLI a refund.

The Department argued that it had relied on overturned precedent that Alabama's franchise-tax scheme was not unconstitutional and that the state would incur an extreme hardship if it is required to refund the franchise taxes paid by all foreign taxpayers who had requested refunds. As a result, the court

held that the state had established the existence of a genuine issue of material fact as to VLI's right to a refund and remanded the case to the trial court for further proceedings.

In the interim, both the Department and VLI have filed petitions for writ of *certiorari* with the Alabama Supreme Court.

State Dep't of Revenue v. Union Tank Car Co.

In *State Dep't of Revenue v. Union Tank Car Co.*,²⁴ the court of civil appeals ruled that an Illinois-based corporation leasing railroad cars to lessees using the cars in Alabama did not have the requisite nexus with Alabama and thus was not subject to Alabama corporate income tax.



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Union Tank Car Company (“UTCC”) was headquartered in Chicago, Illinois. It manufactured and leased specialty railcars to customers throughout the United States, including one lessee based in Alabama. UTCC had manufacturing facilities, sales offices and repair and service offices throughout the country, but none were located in Alabama. All lease agreements were executed in Illinois.

The terms of UTCC’s standard lease did not specify where the railcars would be used and required the lessees to arrange to pick up the railcars from UTCC’s manufacturing facility. UTCC had no employees and owned no property in Alabama during the tax years at issue. Some of its leased railcars were used to transport materials through Alabama and to destinations within Alabama, but none of the railcars were used strictly intrastate.

The Department assessed corporate income tax for the years at issue. In its appeal of the assessment, the taxpayer contended that it did not have the minimum contacts, or nexus, with Alabama sufficient to satisfy the Due Process and Commerce Clauses of the U.S. Constitution. The taxpayer successfully appealed the assessment to the Administrative Law Division, which dismissed the assessment on the grounds that Alabama’s corporate income tax statutes did not require the taxpayer to pay Alabama corporate income tax because the taxpayer was not doing business in Alabama or deriving income from Alabama sources. The Administrative Law Division did not address the constitutional issues. On appeal, the Montgomery County Circuit Court affirmed Chief Administrative Law Judge Bill Thompson’s ruling on statutory grounds and once again did not address the constitutional issues.

The Alabama Court of Civil Appeals affirmed the decision of the Montgomery County Circuit Court and also held for the taxpayer solely on statutory grounds without discussing constitutional nexus issues, stating that “[h]aving resolved the central issue of taxation in this manner, we need not address the various constitutional questions raised by the parties....”²⁵ The Department filed a petition for writ of *certiorari* with the Alabama Supreme Court, stressing that this decision involved a material question of first impression in Alabama and had potential ramifications far beyond just the taxpayer at issue. Their petition was denied without opinion on June 15, 2007.

Boyd Brothers Transportation, Inc. v. State Dep’t of Revenue

In *Boyd Brothers Transportation, Inc. v. State Dep’t of Revenue*,²⁶ the court of civil appeals ruled that the Department may not assess use tax on certain freight truck tractors and truck trailers used by an Alabama-based trucking company in interstate commerce.

Boyd Brothers is an interstate motor freight carrier headquartered in Clayton, Alabama that purchased hundreds of trucks and trailers during the years in question, which were shipped to Boyd Brothers’ Ohio terminal. Boyd Brothers serviced the vehicles, titled and tagged them and registered them in Ohio. From the Ohio terminal the vehicles were placed in interstate service throughout the United States. After the trucks had been in use an average of 400 days, Boyd Brothers assigned many of them to drivers based in Alabama or used them to haul intra-state loads in Alabama. The trucks were still used in the interstate common carrier and contract carrier business.

Boyd Brothers did not pay sales or use tax to any state either on the purchase or on subsequent use of the trucks and trailers. The Department assessed use tax on the trucks that were assigned to Alabama-based drivers or used to haul intra-state loads in Alabama, without apportionment based on mileage within and outside Alabama. Both the Administrative Law Division and the Barbour County Circuit Court affirmed the assessment.

The court of civil appeals reversed, accepting all three of Boyd Brothers’ arguments on appeal. First, Boyd Brothers argued that since *sales* tax would not have been charged on its purchase of the vehicles if the purchase had taken place in Alabama (due to the so-called “drive-out” exemption found at *Alabama Code* section 40-23-2(4)), then no *use* tax may be charged on a similar transaction taking place outside Alabama. Second, there was no evidence the company intended to use the trucks and trailers in Alabama when it purchased them, and thus an exemption was available to Boyd Brothers pursuant to a Department regulation which provides that “[w]here the owner of tangible personal property has purchased such property for use outside of Alabama and has, in fact, used it outside of Alabama, [then] no use tax will be due by the owner because of later storage, use or consumption... in Alabama.”²⁷

Last, Boyd Brothers argued that the imposition of the use tax here would violate the Commerce Clause because it cannot lawfully be imposed upon a transaction that bears no relationship to the taxpayer’s presence in Alabama. The use tax at issue was in effect an unapportioned flat tax—two percent of either the sales price or the fair market value of the property when it is put to use in Alabama, whichever is less—without regard to the number of miles the taxpayer drives the subject vehicles in Alabama.

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The court concluded, even after finding for the taxpayer on both *non-constitutional* grounds, that the Commerce Clause was indeed violated. The court noted that the U.S. Supreme Court in *American Trucking Associations, Inc. v. Scheiner*²⁸ held that certain flat taxes on interstate common carriers contradicted the central purpose of the Commerce Clause by imposing “a much higher charge per mile traveled in the State” on out-of-state vehicles than on in-state vehicles, and “do not even purport to approximate fairly the cost or value of the use of Pennsylvania’s roads.”²⁹ The court pointed out that under the Department’s theory, a Boyd Brothers truck would pay the same 2 percent tax if it drove one mile in Alabama vs. an intra-state carrier driving thousands of miles in Alabama annually.

Somewhat surprisingly, the Department did not petition for rehearing or for *certiorari* so this case is now final. ▲▼▲

Endnotes

1. See *Service Corp. Int'l v. Fulmer*, 883 So. 2d 621, 629 n.8 (Ala. 2003) (“Alabama courts have no discretion to depart from the interpretations of the Commerce Clause set forth by the United States Supreme Court.”).
2. A sales tax is an excise tax that is generally imposed on a retail transaction that occurs in-state, while a use tax is an excise tax that is generally imposed on the storage, use, or consumption of tangible personal property in a state. The use tax generally acts as a complement to the sales tax, since it is usually imposed on goods that are purchased out-of-state but used or consumed in the state. States usually allow a credit against their use tax for sales taxes required to be paid to other jurisdictions on the same goods.
3. *Hoover, Inc. v. State Department of Revenue*, 833 So. 2d 32 (Ala. 2002).
4. *Ex parte Hoover, Inc.*, 956 So. 2d 1149 (Ala. 2006).
5. *Id.* at 1155.
6. *Id.* at 1156.
7. *Id.*
8. Case No. 2060142, 2007 WL 2460086 (Ala. Civ. App. Aug. 31, 2007).
9. 127 S.Ct 1786 (2007).
10. 2007 WL 2460086, at *5.
11. *Id.* at *9.
12. CV-03-3172 (Jan. 24, 2007).
13. 953 So. 2d 1240 (Ala. Civ. App. 2006).
14. The BPT and CST were generally levied on certain corporations and limited liability entities organized under the laws of Alabama or doing business in Alabama (if organized under the laws of another state or country).
15. As stated above, the CST deduction was available for corporations making investments in other corporations doing business in Alabama, while the BPT deduction was available to corporations or other limited liability entities making investments in any other entity doing business in Alabama. The distinction was made because the CST was levied on corporations only, while the BPT was levied on all types of limited liability entities.
16. 953 So. 2d at 1245.
17. Case No. 2040298 (June 30, 2006), *cert. denied* (Apr. 13, 2007).
18. Pursuant to *Alabama Code* section 40-18-24.1, nonresident partners/members must file a consent to jurisdiction and to pay Alabama income tax on their distributions, or else the entity must pay the related tax and file a composite tax return on their behalf.
19. Case No. 2060607, 2007 WL 4215046 (Ala. Civ. App. Nov. 30, 2007).
20. 526 U.S. 160 (1999).
21. CV 2001-1106 (March 12, 2007).
22. 2007 WL 4215046, at *6.
23. *Id.* at *3 (quoting *South Central Bell*, 789 So. 2d at 149).
24. Case No. 2050652, 2007 WL 1098227 (Ala. Civ. App. Apr. 13, 2007), *cert. denied* (Jun. 15, 2007).
25. *Id.* at *8.
26. Case No. 2050675, 2007 WL 1793027 (Ala. Civ. App. June 22, 2007).
27. Ala. Admin. Code r. 810-6-5-.25(1).
28. 483 U.S. 266 (1987).
29. *Id.* at 290.



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