

IN THE SUPERIOR COURT FOR THE STATE OF ALASKA

THIRD JUDICIAL DISTRICT AT ANCHORAGE

SCHLUMBERGER TECHNOLOGY )  
CORPORATION & SUBSIDIARIES, )  
 )  
Appellant, )  
 )  
vs. )  
 )  
STATE OF ALASKA, )  
DEPARTMENT OF REVENUE, )  
 )  
Appellee. )  
\_\_\_\_\_ )

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Case No. 3AN-10-7367CI

OAH No. 08-0577-TAX

DECISION & ORDER

Schlumberger Technology Corporation & Subsidiaries appeals the State of Alaska, Office of Administrative Hearings decision affirming the State of Alaska, Department of Revenue's informal conference decision approving proposed tax assessments for 1998-2000.

**BACKGROUND & CASE HISTORY**

Schlumberger Technology Corporation and Subsidiaries ("Schlumberger") is a Texas company that provides oil field services.<sup>1</sup> Schlumberger filed Alaska corporate income tax returns for the tax years 1998-2000 on a unitary combined basis with its domestic subsidiaries.<sup>2</sup> The State of Alaska, Department of Revenue ("DOR") audited the returns and concluded that income from Schlumberger's foreign parent corporation, Schlumberger Limited ("Limited"), should have been included.<sup>3</sup> The DOR then issued corporate tax

<sup>1</sup> Record ("R.") 256.

<sup>2</sup> *Id.*

<sup>3</sup> R. 262.

assessments that included Limited in Schlumberger's unitary business group. The DOR applied Alaska's deduction for 80% of foreign dividends and then added the remaining foreign dividends to derive taxable income for Alaska.

Schlumberger protested the DOR's proposed tax assessments through an informal conference the result of which was the September 17, 2008 decision levying a proposed tax assessment for 1998-2000 of \$377,779.<sup>4</sup> Schlumberger appealed to the Office of Administrative Hearings ("OAH") and filed a motion for partial summary judgment seeking to strike down the DOR's proposed tax assessment.<sup>5</sup>

The OAH administrative law judge ("ALJ") denied Schlumberger's motion for partial summary judgment on December 30, 2009.<sup>6</sup> The parties then entered a stipulation in which Schlumberger agreed to withdraw issues not addressed by the ALJ Order.<sup>7</sup> Because there were no issues remaining to be decided, the ALJ on February 10, 2010 denied Schlumberger's appeal and upheld the DOR's proposed tax assessments.<sup>8</sup>

The instant appeal followed. Oral argument was held on September 28, 2011.

#### **JURISDICTION**

The superior court has jurisdiction to hear appeals from final orders in administrative agency proceedings pursuant to AS 22.10.020(d), AS 44.62.560(a), AS 43.05.480, and Alaska Rule of Appellate Procedure 601(b).

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<sup>4</sup> R. 279.

<sup>5</sup> R. 64-110.

<sup>6</sup> R. 10. Hereafter, "ALJ Order."

<sup>7</sup> R. 4.

<sup>8</sup> R. 2. The order became final on April 12, 2010. R. 4.

## STANDARD OF REVIEW

Alaska courts employ four recognized standards to review administrative decisions:<sup>9</sup> (1) the substantial evidence test for questions of fact; (2) the reasonable basis test for questions of law or fact involving agency expertise; (3) the substitution of judgment test for questions of law where no expertise is involved; and (4) the reasonable and not arbitrary test for review of administrative regulations.<sup>10</sup>

The issues presented here are questions of law—statutory and constitutional interpretation—and the parties agree that the court should employ the substitution of judgment standard.<sup>11</sup> To the extent the issues are properly before the court for review,<sup>12</sup> the court will employ the substitution of judgment standard on issues of statutory interpretation and will review constitutional issues *de novo*.

## POINTS ON APPEAL

Schlumberger raises two points in the instant appeal:<sup>13</sup>

(1) did the administrative decision err in imposing Alaska corporate income taxes on the foreign dividends contrary to Alaska's incorporation of federal taxable income for computing Alaska taxable income (the "statutory issue"); and

(2) did the administrative decision err in imposing Alaska corporate net income taxes on the foreign dividends

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<sup>9</sup> *Brandal v. State, Commercial Fisheries Entry Commission*, 128 P.3d 732, 735 (Alaska 2006).

<sup>10</sup> *Id.*; Questions of constitutional law are reviewed *de novo*. *Pasco v. State, Dept. of Admin., Div. of Motor Vehicles*, 45 P.3d 324, 326 (Alaska 2002).

<sup>11</sup> Schlumberger's Brief at 5-7; State's Brief at 5.

<sup>12</sup> See Preservation, *infra*.

<sup>13</sup> Schlumberger's Brief at 2.

contrary to the requirements of the Commerce and Foreign Commerce Clauses of the United States Constitution (the "constitutional issue").

#### PRESERVATION

The State asserts that neither of the issues raised by Schlumberger in the instant appeal has been preserved.<sup>14</sup> The State argues that by signing the stipulation withdrawing issues not decided in the ALJ Order, Schlumberger withdrew from appeal all issues except the one raised and decided in the ALJ Order concerning the meaning and effect of Alaska's Water's Edge Statute in determining the Alaska taxable income with respect to a non-U.S. corporation.<sup>15</sup> Schlumberger claims that the issues presented here are reviewable.<sup>16</sup>

The State's assertion is correct insofar as the statutory issue argued here by Schlumberger is not exactly the same as what it argued in its partial summary judgment motion before the OAH; however, as the State notes, the issue appears to be subsumed within the issue argued in the partial summary judgment motion and it appears to have been effectively addressed in the ALJ Order.<sup>17</sup> Moreover, the critical question that must be answered to determine whether the statutory issue is preserved for purposes of this appeal is whether the court and the opposing party are fully informed as to the matter at issue.<sup>18</sup> The State does not claim that either it or the court is uninformed in this regard. The matter has been fully briefed by both parties

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<sup>14</sup> State's Brief at 6.

<sup>15</sup> *Id.*

<sup>16</sup> Schlumberger's Reply Brief at 2.

<sup>17</sup> State's Brief at 2, 7.

<sup>18</sup> *See, Native Village of Eklutna v. Board of Adjustment for Anchorage*, 995 P.2d 641, 646 (Alaska 2000).

and appears to have been addressed in the order from which this appeal arises. Moreover, because the statutory issue raised by Schlumberger here is essentially on all fours with the issue the parties stipulated Schlumberger could raise (and which it did raise) before the ALJ, it is not excluded from review by this court based on the stipulation below. The statutory issue is preserved and is reviewable here.

Contrarily, the constitutional issue is not preserved and is not reviewable here. The stipulation below did not allow for the issue to be raised before the ALJ. The constitutional issue was not raised before the ALJ.<sup>19</sup> The ALJ Order did not address nor did it decide the constitutional issue. Although the parties have briefed the issue in the instant appeal it appears that Schlumberger's having done so is in direct contravention of the stipulation below.<sup>20</sup>

#### **STATUTORY ISSUE**

The ALJ Order did not err in imposing Alaska corporate income taxes on the foreign dividends in issue. As both the ALJ Order and the State in its briefing here recite, the issue is one of statutory interpretation and the statutes are clear in this regard. The court will not regurgitate the content of the ALJ Order here but will simply note that it is well-reasoned and appears to have reached the correct conclusion. The ALJ's reliance on the

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<sup>19</sup> A *de minimis* and in-passing reference to an issue in an oral argument (as described in Schlumberger's Reply Brief at 7 n. 12, referring to argument before the ALJ), does not effectively or meaningfully raise the issue. During oral argument in the superior court on September 28, 2011, Schlumberger admitted that the preservation of the constitutional issue was "not quite as clear" as preservation of the statutory issue and they further admitted that the ALJ did not "directly" discuss or decide it in the ALJ Order.

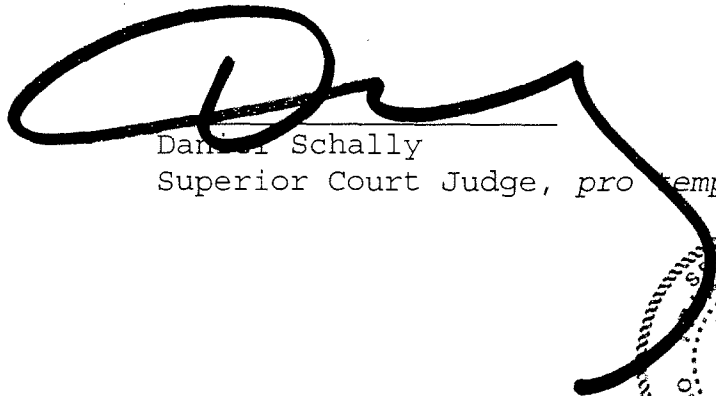
<sup>20</sup> The agency's lack of jurisdiction to decide constitutional issues is not relevant to consideration of the fact that Schlumberger waived the issue by stipulation.

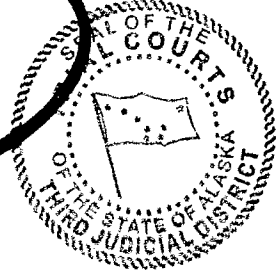
OSG Bulk Ships case<sup>21</sup> is not misplaced because the legislature did not overrule the case when it amended AS 43.20.021(a) to include a provision regarding 26 U.S.C. § 883.<sup>22</sup>

**CONCLUSION**

The OAH's February 10, 2010 affirmation of the DOR's September 17, 2008 informal conference decision is **AFFIRMED**.

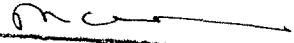
DATED this 18<sup>th</sup> day of March 2012 at Valdez, Alaska.

  
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Daniel Schally  
Superior Court Judge, pro tempore



I certify that on 04/02/2012 a copy  
of the above was made and distributed following at  
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CSED  AG  PD  DA  
Lyle, Taylor, Kobayashi

  
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Deputy Clerk

<sup>21</sup> State, Dept. of Revenue v. OSG Bulk Ships, Inc., 961 P.2d 399 (Alaska 1998).  
<sup>22</sup> State's Brief at 12.