

KETZEL, LLC  
2216 2 AVENUE N.  
BIRMINGHAM, AL 35203,

Taxpayer,

v.

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA  
ALABAMA TAX TRIBUNAL

DOCKET NO. BPT. 15-881

### PRELIMINARY ORDER

This appeal involves final assessments of 2010 through 2013 business privilege tax entered against the above Taxpayer. A copy of the Revenue Department's Answer is enclosed with the Taxpayer's copy of this Order.

The Taxpayer filed its articles of organization with the Alabama Secretary of State's Office on April 11, 2006. It dissolved on December 30, 2014. The Taxpayer failed to file business privilege tax returns for the subject years. The Revenue Department consequently assessed the Taxpayer for the tax due for those years, plus penalties and interest.

The Taxpayer claims in its notice of appeal that it was dissolved in December 2009, and thereafter did not conduct any business in Alabama or elsewhere. The articles of dissolution filed with the Jefferson County, Alabama Probate Judge show a dissolution date of December 31, 2009. But the articles were not filed with the Jefferson County Probate Court until December 30, 2014.

The Revenue Department's Administrative Law Division, now the Tax Tribunal, addressed the backdating of articles of dissolution in *PHR Solutions, LLC v. State of Alabama*, Docket BPT. 13-705 (Admin. Law Div. 2/6/2014), as follows:

The Taxpayer's representative argues that the effective date of dissolution is the date shown on the Articles of Dissolution form, and that Alabama law does not prohibit the backdating of a dissolution effective date on the form to a date before the Articles are filed with the probate judge. I disagree.

A reasonable and correct interpretation of §10-12-42(a)(4) is that an LLC is effectively dissolved either immediately upon the filing of the appropriate form, or on a future date certain as specified on the dissolution form.

The Legislature could not have intended to allow for the backdating of an effective dissolution date because it would lead to unintended and unreasonable results. For example, assume an LLC filed its articles of organization in Alabama on January 1, 2006. The LLC thereafter had the privilege of doing business in Alabama and paid the annual business privilege tax in each year. The LLC then filed its Articles of Dissolution on January 1, 2014 showing an effective dissolution date of January 1, 2006. If the Taxpayer's position is correct, the LLC in the above example would have effectively dissolved on the same day it was organized, in which case it would be entitled to a refund of the business privilege tax it paid during the years it existed and operated in Alabama. Clearly that result could not have been intended by the Legislature. A statute should not be construed in such a way as to lead to an absurd or unintended result. *Sizemore v. Franco Distributing Co., Inc.*, 594 So.2d 143 (Ala. Civ. App. 1991).

The fact that the LLC did not conduct any business in Alabama in 2012 also is of no consequence. The Alabama business privilege tax is on the privilege of doing business in Alabama, whether any business is actually conducted. Code of Ala. 1975, §40-14A-22.

*PHR Solutions* at 2 – 3.

The above case is directly on point in this case. The Taxpayer was dissolved for Alabama business privilege tax purposes on December 30, 2014, when it filed the articles of dissolution in Jefferson County. Because the Taxpayer was still qualified to do business in Alabama in the subject years, it is liable for the business privilege tax in those years.

The Taxpayer is directed to review the above analysis and notify the Tax Tribunal by August 21, 2015 if it disagrees with the analysis, and if so, why. The case will then be set for hearing, or other appropriate action will be taken. If the Taxpayer fails to respond by

the above date, the final assessments, less the penalties, will be affirmed. If the Taxpayer has any questions, it should contact the Alabama Tax Tribunal at 334-954-7195. Our mailing address is P.O. Box 327130, Montgomery, AL 36132-7130.

Entered July 21, 2015.

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BILL THOMPSON  
Chief Tax Tribunal Judge

bt:dr

cc: Gwendolyn B. Garner, Esq.  
Sidney & Elenor Conn (w/enc.)