HOME BY HOME, LLC 1619 WENTWORTH DRIVE MONTGOMERY, AL 36106-2636,	§	STATE OF ALABAMA ALABAMA TAX TRIBUNAL
Taxpayer,	§	DOCKET NO. BPT. 14-1041
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER

The Revenue Department assessed Home By Home, LLC ("Taxpayer") for 2013 business privilege tax. The Taxpayer appealed to the Tax Tribunal pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on April 16, 2015. Will Sellers represented the Taxpayer. Assistant Counsel David Avery represented the Department.

The Taxpayer is a single member LLC that qualified to conduct business in Alabama with the Alabama Secretary of State on September 30, 2013. The Taxpayer is solely owned by International Xchange Organization, an Alabama not-for-profit corporation that is recognized by the IRS as a §501(c)(3) organization.

The Taxpayer failed to file a 2013 Alabama business privilege tax return. The Department subsequently assessed the Taxpayer for the minimum $100 business privilege tax due for that year, plus penalties and interest. The Department has agreed that the penalties should be waived.

Code of Ala. 1975, §40-14A-43 specifically exempts from the business privilege tax any organization described in 26 U.S.C. §501(a), which includes a §501(c)(3) charitable organization. The Taxpayer concedes that it is not itself a §501(c)(3) organization. It contends, however, that because it is a disregarded entity for federal tax purposes, "it is treated as a branch or division of the owner or, in other terms, it is treated as the same

entity as the owner." Taxpayer's Reply Brief at 3. The Taxpayer thus asserts that because it is solely owned by a §501(c)(3) tax exempt entity, it must also be treated as a §501(c)(3) entity, in which case it is exempted from the business privilege tax pursuant to §40-14A-43. I disagree.

The Taxpayer cites numerous IRS private letter rulings and other federal authorities in support of its claim that for federal tax purposes, a single member LLC may elect to be treated as the same entity as its §501(c)(3) nonprofit owner. I agree. I also agree that for Alabama income tax purposes, the general rule is that an LLC "shall be classified in the same manner as it is for federal tax purposes." Code of Ala. 1975, §10A-5A-1.07(b).[1] But §10A-5A-1.07(b) also provides an exception to the above general rule concerning the business privilege tax levied in Chapter 14 of Title 40, Code of Ala. 1975. Section 10A-5A-1.07(b) reads as follows:

> Notwithstanding subsection (a), for purposes of taxation, other than Chapter 14A of Title 40, a domestic or foreign limited liability company shall be treated as a partnership unless it is classified otherwise for federal income tax purposes, in which case it shall be classified in the same manner as it is for federal income tax purposes. (emphasis added)

Based on the above exception, a single member LLC is not a disregarded entity for purposes of the Alabama business privilege tax levied in Chapter 14A of Title 40. Consequently, an LLC that is disregarded for federal and Alabama income tax purposes is still an entity subject to the business privilege tax. Various provision in the business privilege tax law, Code of Ala. 1975, §40-14A-1 et seq., support the above conclusion.

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[1] Section 10A-5A-1.07 was enacted pursuant to Act 2014-144, and became effective January 1, 2015. That section is, however, identical to prior law at §10A-5-1.06, which was repealed by Act 2014-144.

To begin, §40-14A-22(a) levies the business privilege tax "on every corporation, limited liability entity, and disregarded entity doing business in Alabama." The business privilege tax is thus specifically levied on an entity that is otherwise disregarded for federal and Alabama tax purpose. Section 40-14A-22(c) provides that the tax "on certain corporations, business trusts, limited liability entities, and disregarded entities shall not be less than $100." Again, an entity disregarded for other tax purposes is still liable for at least the minimum $100 business privilege tax.

Section 40-14A-23 defines "net worth" for business privilege tax purposes. Paragraph (c) of that section provides that a disregarded entity's net worth may be included in the net worth of the owner, in which case the net worth of the disregarded entity shall be zero. But if the owner is not subject to the business privilege tax, as in this case because the Taxpayer's owner is an exempt §501(c)(3) organization, the net worth of the disregarded entity cannot be transferred to the owner. And even if the owner is subject to the business privilege tax and the net worth of the disregarded entity is transferred and taxed to the owner, the disregarded entity would still be liable for the minimum $100 tax.

Importantly, Code of Ala. 1975, §40-14A-25 provides that – "[a] disregarded entity that is owned by an individual, general partnership, or other entity not subject to the tax levied by this article shall file a return and pay the tax levied on it by this article." That requirement specifically applies in this case. Although the Taxpayer is owned by an entity that is itself exempt from the business privilege tax, the Taxpayer is still required to file a business privilege tax return and pay at least the minimum tax due.

Finally, the Taxpayer argues that federal law and not Alabama law must control for purposes of determining if the Taxpayer should be treated as a disregarded entity.

> Under the terminology of Ala. Code § 40-14A-43, the only material issue in the present matter is whether the Taxpayer may be disregarded as a separate entity from International Xchange for purposes of Section 501(a) and 501(c)(3) of the Internal Revenue Code. That stated, in making its final argument mentioned above, it appears that the Department either misunderstands the issue or seeks to use the Code of Alabama to somehow preclude the Taxpayer from being considered a disregarded entity for purposes of Section 501(a) and 501(c)(3). Under the federal regulation cited above, any attempt by the Department to assert that the Code of Alabama somehow precludes the Taxpayer from being disregarded and thereby an organization "described in 26 U.S.C. § 501(a)" directly contradicts determinative federal law. Therefore, the Department's argument that the Taxpayer is not a disregarded entity for purposes of the Alabama business privilege tax pursuant to the Code of Alabama is immaterial and should be dismissed by this Tribunal.

Taxpayer's Reply Brief at 7.

I disagree with the above argument. The issue is not whether the Taxpayer should be considered a disregarded entity for purposes of §501(a) and §501(c)(3). Rather, the issue is whether the Taxpayer should be treated as a disregarded or nonexistent entity for Alabama business privilege tax purposes. As discussed, the exception in §10A-5A-1.07(b) removes the business privilege tax from the general rule that for Alabama tax purposes, an LLC should be classified the same as it is for federal income tax purposes. A single member LLC that is disregarded for federal (and Alabama) income tax purposes thus is not disregarded for business privilege tax purposes.

The final assessment, less the penalties, is affirmed. Judgment is entered against the Taxpayer for tax and interest of $102.55. Additional interest is also due from the date the final assessment was entered, October 22, 2014.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2B-2(m).

Entered August 10, 2015.

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BILL THOMPSON
Chief Tax Tribunal Judge

bt:dr
cc: David E. Avery, III, Esq.
William B. Sellers, Esq.