

ALABAMA TAX TRIBUNAL

J&WWGT COMPANY, LLC,	§	
Taxpayer,	§	DOCKET NO. BPT. 19-224-LP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

FINAL ORDER

This appeal involves a final assessment of 2018 business privilege tax. The Taxpayer’s 2018 business privilege tax return was due, with extension, by September 17, 2018. It filed its return with the Revenue Department on October 15, 2018. The Taxpayer elected to be treated as an Electing Family Limited Liability Entity (“family LLE”). That election would have resulted in the Taxpayer’s maximum tax being capped at \$500.

Because the 2018 return was not timely filed, the Revenue Department disallowed the family LLE status. It adjusted the Taxpayer’s liability accordingly, and entered the final assessment in issue.

A family LLE is defined at Ala. Code § 40-14A-1(h). Subparagraph (2) of that section requires that to be considered an electing family LLE, the LLC must “[e]lect(s) annually (**on or before the due date, including extensions**, of the return for the tax levied by this chapter) in a manner prescribed by the department to be taxed for the taxable year as a family limited liability entity.” (emphasis added)

The Revenue Department subsequently promulgated Revenue Department Reg. 810-2-8-.05 in 2005 entitled “Election To File As A Family Limited Liability Entity.” That regulation requires

that the election must be attached to the subject year's return on or before the return due date. The regulation further provides that family LLE status will be disallowed if the election form is not filed with the return in a timely manner.

The Revenue Department does not appear to dispute that the Taxpayer otherwise qualified to be treated as an electing family LLE for 2018 but for the fact that it failed to timely file the Form BPT-E with its 2018 return. It argues that because Reg. 810-2-8-.05 requires that the election must be timely, the Taxpayer's failure to timely file the return and form prohibits the Revenue Department from allowing family LLE status.

The Taxpayer states that the 2018 business privilege tax return and its federal Form 1065 were originally submitted on September 17, 2018, through its accountant's online filing software. It contends that an error occurred in the software that went undetected until October 15, 2018, the date on which the return and form were resubmitted to the Revenue Department. It argues that it had every intention to timely file the return.

The Taxpayer contends that its failure to timely file the 2018 business privilege tax return was a software mistake, and that the Revenue Department should accept the election after the fact and allow the Taxpayer family LLE status for 2018.

As indicated, § 40-14A-1(h)(2) requires an LLC to elect to be taxed as a family LLE "in a manner prescribed by the department. . . ." The manner prescribed by the Revenue Department in Reg. 810-2-8-.05 is to timely file a form, Form BPT-E, with the subject year return that includes information sufficient to show that the LLC qualified as a family LLE for the year.

A Revenue Department regulation must be followed unless it is contrary to or inconsistent with a statute, or if it is unreasonable. *Ex part White*, 477 So.2d 422 (Ala. 1985), on remand, 477

So.2d 425. Reg. 810-2-8-.05 is not contrary to or inconsistent with a statute. It thus must be followed unless it is unreasonable.

The regulation properly requires LLCs to timely file the form with the return, or at least on or before the due date of the return, because doing so is mandated by the controlling statute.

As discussed, § 40-14A-1(h)(2) requires that for an LLC to be treated as a family LLE, it must elect in a manner prescribed by the Department, i.e., by filing a Form BPT-E, “on or before” the due date of the return. The timely filing of the form is thus required by statute. Consequently, family LLE status cannot be allowed in this case. While the Taxpayer’s representative contends that the election was attempted and assumed properly filed on the due date, it was in fact not filed then.

I sympathize with the Taxpayer, but the Revenue Department is correct that the election is done by timely submitting the return and Form BPT-E. Under the circumstances, the late-payment penalty is waived for reasonable cause.

The final assessment, less the penalty, is affirmed. Judgment is entered against the Taxpayer for \$7,629.31. Additional interest is also due from the date the final assessment was entered, February 1, 2019.

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

Entered August 13, 2019.

/s/ Leslie H. Pitman
LESLIE H. PITMAN
Associate Tax Tribunal Judge

lhp:dr

cc: Jeffrey L. Winland, CPA
Ralph M. Clements, III, Esq.