

ALABAMA TAX TRIBUNAL

GRANT FAMILY LP,
A PARTNERSHIP, AND ITS
PARTNERS J. FRANK GRANT,

§

Taxpayer,

§

DOCKET NO. BPT. 24-0044-JP

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER

This appeal was docketed as involving the entry of final assessments of business privilege tax for 2021 and 2022. A trial was held on September 18, 2024. Hugh Kirkland represented the Taxpayer. Andrew Gidiere represented the Revenue Department, and Denitra Jones, the Revenue Department’s examiner, appeared and testified.

At trial, the parties represented to the Tax Tribunal that no final assessment had been issued for the 2022 tax year at the time of the Taxpayer’s appeal or at the time of trial. Instead, preliminary and final assessments for the 2020 tax year were issued simultaneously with the assessments for the 2021 tax year. The Taxpayer was not subject to any outstanding tax liability for 2020 because of having paid the gross amount of calculated tax. However, there was a question as to whether the Taxpayer was entitled to a refund for the 2020 year because of the identical issue concerning the 2021 final assessment—whether the Taxpayer had properly elected to be treated as a family limited liability entity (“family LLE”). Therefore, the parties agreed that

review of the 2022 tax year was outside the Tax Tribunal's jurisdiction but requested that the ruling in this matter be applicable to both 2020 and 2021.

Ala. Code § 40-14A-1(h) defines a family LLE, and subparagraph (2) of that section states that a limited liability entity seeking family LLE status 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). Ala. Admin. Code r. 810-2-8-.05(2) requires that “[t]he election must be attached to the Business Privilege Tax return and filed on or before the due date of the return [.]” Ala. Admin. Code r. 810-2-8-.05(3) requires the election be made on a form prescribed by the Department. The corresponding form is Form BPT-E. Finally, Ala. Admin. Code r. 810-2-8-.05(4) specifies that family LLE status will be disallowed “if the election is not filed in a timely manner[.]”

Here, Ala Admin. Code r. 810-2-8-.05 complies with the delegation of rule-making authority included in Ala. Code § 40-14A-1(h) and is consistent with that statute's requirement that LLE status must be elected annually “on or before the due date” of that year's tax return.

At trial, the Taxpayer stated that it intended to include Form BPT-E with its 2020 and 2021 returns but acknowledged that it had failed to do so. The Taxpayer stated that it filed its Form BPT-E for each tax year as soon as it received the Revenue Department's notice that Form BPT-E was not included in the corresponding returns. However, the Taxpayer acknowledged that such subsequent and separate filing of

Form BPT-E after the filing of the return violated Ala. Code § 40-14A-1 and Ala. Admin. Code r. 810-2-8-.05.

Therefore, the Taxpayer is not entitled to a refund of business privilege tax for the 2020 tax year. And the 2021 final assessment is upheld. For the 2021 year, judgment is entered against the Taxpayer in the amount of \$4,922.65, plus additional interest that continues to accrue from the December 18, 2023, entry of the final assessment until the liability is paid in full.

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

Entered September 20, 2024.

/s/ Jeff Patterson
JEFF PATTERSON
Chief Judge
Alabama Tax Tribunal

jp:thb

cc: John D. DeLoach
Ralph M. Clements III, Esq.
Andrew Gidiere, Esq.