

HARRIS INVESTMENTS LTD §
1907 WINDSOR STREET §
MURFREESBORO, TN 37130, §

STATE OF ALABAMA
ALABAMA TAX TRIBUNAL
DOCKET NO. BPT. 17-712-CE

Taxpayer, §

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed Harris Investments, LTD (“Taxpayer”) for 2015 business privilege tax. The Taxpayer appealed to the Tax Tribunal, pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a.

The Taxpayer timely filed its Alabama business privilege tax return for the tax year 2016, reporting tax due in the amount of \$500. The Taxpayer did not indicate that it was electing treatment as a family limited liability entity (“family LLE”) by checking the box on line 17 of the return. Additionally, in its Answer, the Department asserts that the Taxpayer did not timely file the required election form - Form BPT-E - along with the return. Pursuant to Department Reg. 810-2-8-.05, the Department determined that the Taxpayer did not qualify for the family LLE election, therefore the limitation of maximum \$500 in tax did not apply. Using the best available information, the Department calculated the Taxpayer’s total tax liability to be \$1,182.00. After credit was given for the \$500 in tax previously paid to the Department, a final assessment was entered against the Taxpayer for additional tax, penalty and interest.

The Taxpayer argues, through its representative Claudia Sherer, CPA, that the Taxpayer has timely filed and elected treatment as a family LLE for numerous years prior to the tax year that is the subject of this appeal. She asserts that the 2016 return was also

timely filed and that the election was properly claimed by including the Form BPT-E. She does not dispute that the box on line 17 was not checked. She states that she resubmitted the Form BPT-E after the Department requested a copy of the Taxpayer's partnership return for tax year 2015 (the determination period for business privilege tax year 2016). She requests an abatement of tax, as this was the first time the Taxpayer has erred to check the box on line 17. She states that the Taxpayer's partners are elderly and that the assessment has caused "quite an emotional hardship on them."

To date, the Taxpayer has failed to provide the Tax Tribunal with proof that Form BPT-E was included with the original return filed by the Taxpayer.

An "Electing Family Limited Liability Entity" is defined at Code of Ala. 1975, §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."

The Department subsequently promulgated 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, and must be made on forms (Form BPT-E) prescribed by the Department. 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 Tax Tribunal upheld Department Reg. 810-2-8-.05 in *B&B Enterprises, LLC v. Alabama Dep't of Rev.*, Dkt. BPT-14-439. That case reads in pertinent part as follows:

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 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 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.

...

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.

I agree with the Taxpayer’s representative that the results in this case are harsh, especially considering that the Taxpayer checked the box on its 2013 return indicating that Form BPT-E was attached to the return. But the Department is correct that the election is done by timely submitting the Form BPT-E, and not by checking the box on the return, which is not mentioned in the statute or Reg. 810-2-8-.05.

B&B Enterprises at 3-4.

Code of Ala. 1975, §40-2B-2(l)(7) requires that the Tax Tribunal follow its own precedent, absent specific circumstances. Specifically, §40-2B-2(l)(7) provides that the Tax Tribunal’s interpretation of a law subject to contest in one case shall be followed by the Tax Tribunal in subsequent cases involving the same law, unless the interpretation conflicts with that of an appellate court or the Tax Tribunal provides satisfactory reasons for reversing prior precedent.

I know of no appellate decisions reversing the precedent set in *B&B Enterprises*. While I agree that this precedent sometimes results in a harsh result, I find no satisfactory

reason to reverse precedent and hold that the Department's regulation is contrary to §40-14A-1(h)(2), the statute giving the Department the authority to prescribe how a Taxpayer must make the election.

The final assessment, less the penalty, which is waived for cause, is affirmed. Judgment is entered against the Taxpayer for \$712.49. Additional interest is also due from the date the final assessment was entered on May 31, 2017.

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

Entered September 26, 2017.

CHRISTY O. EDWARDS
Associate Tax Tribunal Judge

cc: Ralph M. Clements, III, Esq.
Claudia H. Sherer, CPA