

ALABAMA WASTEWATER SYSTEMS §
851 AVIATION PKWY. §
SMYRNA, TN 37167, §

Taxpayer, §

v. §

STATE OF ALABAMA §
DEPARTMENT OF REVENUE. §

STATE OF ALABAMA
ALABAMA TAX TRIBUNAL

DOCKET NO. BPT. 15-424

FINAL ORDER

The Revenue Department assessed Alabama Wastewater Systems (“Taxpayer”) for 2009 through 2013 business privilege tax (“BPT”).¹ The Taxpayer appealed to the Tax Tribunal pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on May 16, 2017. The Taxpayer’s attorney, Jeff Risdien, and the Taxpayer’s President, Charles Hyatt, attended the hearing. Assistant Counsel Hilary Parks appeared on behalf of the Department.

The Taxpayer registered to do business in Alabama on April 16, 2008. It is undisputed that the Taxpayer failed to file BPT returns or pay BPT for the subject years. After determining that the Taxpayer was required to file BPT returns and remit the tax for the subject years, the Department prepared estimated BPT returns based on information provided by the Taxpayer in its Alabama corporate income tax returns for the subject

¹ The appeal was originally docketed as an appeal of 2009 through 2014 BPT because the Taxpayer’s Notice of Appeal asserted that it was appealing final assessments entered for these periods. However, because there was no final assessment entered for the 2014 tax period, the Tax Tribunal does not have subject matter jurisdiction to consider an appeal of that period. Code of Ala. 1975, §40-2A-7(b)(5)a. Consequently, this Final Order only addresses final assessments entered by the Department for BPT for the tax years 2009 through 2013.

years.² The Department billed the Taxpayer for the resulting tax due. The Taxpayer did not remit payment, and the Department entered the final assessments at issue on January 16, 2015.

The Taxpayer appealed to the Tax Tribunal on February 13, 2015, arguing that the Department's calculation of tax due was incorrect because it was not allowed a deduction for its investment in its ground pollution control systems in Alabama in calculating its net worth pursuant to Code of Ala. 1975, §40-14A-24(b)(2). Along with its Notice of Appeal, the Taxpayer remitted BPT returns for the subject years. The Taxpayer claimed the 24(b)(2) deduction on those returns. The returns reported tax due in the total amount of \$5,150 for the subject years, and the Taxpayer remitted a check in that amount.

The only issue presented in this appeal is whether the Taxpayer, in calculating its net worth in Alabama for purposes of the BPT, is entitled to deduct the value of its decentralized wastewater treatment systems located in Alabama pursuant to §40-14A-24(b)(2).

The Department argued in its Answer, and during the hearing, that the Taxpayer is not entitled to claim a deduction for its investment in the ground pollution control systems because the systems were not acquired or constructed by the Taxpayer *primarily for the elimination of pollution caused as a result of the Taxpayer's activities* in Alabama. For the reasons set forth below, I agree.

² When a return should have been filed by a taxpayer, but no return is remitted, Code of Ala. 1975, §40-2A-7(b)(1)(a) allows the Department to calculate the correct amount of tax due by using the most accurate and complete information that is reasonably obtainable by the Department. The Department did that in this case.

The BPT is levied at Code of Ala. 1975, §40-14A-22(a). That section levies an “annual privilege tax on every corporation, limited liability entity, and disregarded entity doing business in Alabama, or organized, incorporated, qualified, or registered under the laws of Alabama.” The tax accrues on January 1 of each taxable year, or in the case of a taxpayer organized, incorporated, qualified, or registered during the year, or doing business in the state for the first time, as of the date the taxpayer organizes, incorporates, registers or qualifies to do business, or begins to do business, in Alabama. Taxpayers that are subject to the levy are liable for BPT for each year beginning before the taxpayer dissolves or ceases to exist, or withdraws or forfeits its qualification to do business in Alabama.

The BPT is determined by multiplying a taxpayer’s net worth in Alabama by a schedule of rates provided in §40-14A-22(b). Section 40-14A-23 sets forth the formula for calculating net worth, and §40-14A-24(b) provides certain taxpayers deductions in calculating their net worth.

Relevant to this appeal, §40-14A-24(b)(2) provides a deduction from net worth in an amount equal to the taxpayer’s investment “in all devices, facilities, or structures, and all identifiable components or materials for use therein, that are located in Alabama and are acquired or constructed primarily for the control, reduction, or elimination of air, ground, or water pollution or radiological hazards where such pollution or radiological hazards result from or would be caused by the taxpayer’s activities in Alabama.”

The Taxpayer was formed to facilitate the development of communities and neighborhoods in areas of Alabama that otherwise might not be developed due to the lack of access to a sanitary sewer system. This development is facilitated through the Taxpayer’s design, construction, operation and maintenance of decentralized wastewater

systems that are watertight, and thus, environmentally friendly. In neighborhoods serviced by the Taxpayer, sewage from a home is held in a tank at the house where solids are filtered out and remain in the tank. The remaining wastewater, or grey water, is pumped through a watertight pipe system out of the development and moved to a centralized holding facility where the grey water is treated. After treatment, the resulting clean water is returned to the ground.

The Taxpayer's systems, which are regulated by the Alabama Department of Environmental Management, are environmentally friendly because the system is watertight and does not allow for the infiltration of water or the exfiltration of hazardous waste. Unlike many public sewer systems, the Taxpayer does not discharge the waste flowing through its system into rivers or streams, and the Taxpayer's system does not use a septic tank with a drain field that seeps pollutants into the ground.

The Taxpayer argues that it meets the statutory requirements for claiming the deduction because its activities in designing, installing, operating and maintaining its systems result in development that would not otherwise occur, which in turn results in the production of waste by homes and communities that would not otherwise exist. Essentially, the Taxpayer argues that its activities in Alabama generate pollution because, but for the Taxpayer's presence in the areas served by the Taxpayer's systems, there would be no waste, and thus, no resulting pollution generated.

The Taxpayer's argument does not comport with the plain language of the statute, and if upheld would produce an unintended result. See *Ex parte Pratt*, 815 So. 2d 532, 535 (Ala. 2001) (holding that "[p]rinciples of statutory construction instruct [a court] to interpret the plain language of a statute to mean exactly what it says and to engage in

judicial construction only if the language in the statute is ambiguous.”). There is no question that the Taxpayer’s decentralized systems greatly reduce or control ground pollution vis-à-vis septic systems and public sewer systems that do not control the infiltration of water or the exfiltration of hazardous waste. However, that is not the only criterion that must be met to be entitled to the deduction. The statute was written to allow a taxpayer to offset the cost of controlling or eliminating pollution caused by or resulting from the Taxpayer’s activities in Alabama. This language is not ambiguous; rather, reasonably well-informed persons would understand that the statute requires that the taxpayer’s activities produce the pollution the taxpayer seeks to control or eliminate. See *S & S Distrib. Co. v. Town of New Hope*, 334 So. 2d 905, 907 (Ala. 1976) (citing *State ex rel. Neelen v. Lucas*, 24 Wis. 2d 262, 267 (1964) (holding that “[a] statute or portion thereof is ambiguous when it is capable of being understood by reasonably well-informed persons...”).

I certainly applaud the Taxpayer’s role in facilitating the development of communities that do not have access to sanitary sewer systems and their devotion to reducing pollution in Alabama. While I agree with the Taxpayer that the purpose of the deduction was to incentivize taxpayers to take steps to reduce or eliminate pollution, I cannot ignore the plain language of the statute that requires such pollution be a result of the taxpayer’s activities.

The Taxpayer’s assumption that people would not live in certain areas but for the Taxpayer’s activities requires the Tax Tribunal to accept theoretical assertions that are not shown by record evidence. It might be just as plausible that a development that would not use the Taxpayer’s services simply would opt for another means of handling the resulting

waste, such as using a septic system. In fact, the existence of many communities in this state that do not use the Taxpayer's system supports the conclusion that the resulting waste treated by the Taxpayer was not caused by or produced by the Taxpayer's activities in Alabama. Consequently, the Taxpayer cannot deduct the cost of its decentralized wastewater systems in computing its net worth in Alabama for purposes of determining its BPT liability.

The 2009 through 2013 final assessments are affirmed in the amounts of \$2,043.35, \$7,930.10, \$7,709.98, \$1,888.76, and \$7,264.39, respectively. The Taxpayer's payment of \$5,150 previously submitted on appeal should be credited to the liability resulting from this Final Order. Judgment is entered accordingly. Additional interest is also due from the date the final assessments were entered, January 16, 2016.

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

Entered October 25, 2017.

CHRISTY O. EDWARDS
Associate Tax Tribunal Judge

cc: Gwendolyn B. Garner, Esq.
Jeff Risen, Esq.