

ALABAMA TAX TRIBUNAL

PARKWAY REALTY, LLC,	§	
Taxpayer,	§	DOCKET NO. BPT. 18-924-LP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

FINAL ORDER

The Revenue Department assessed 2014 business privilege tax against the Taxpayer. A hearing was conducted on February 28, 2019. One of the Taxpayer’s members, Johnnie Atchison, and CPA Larry Armstrong attended the hearing. Assistant Counsel Margaret McNeill represented the Revenue Department.

The Taxpayer’s representative argues that the entity dissolved under Ala. Code § 40-14A-22 on December 31, 2013, when there was an agreement to close the business. Thus, he contends that the business privilege tax for 2014 is not due. He contends that the act of filing the Articles of Dissolution on March 21, 2014, was part of the “winding down” process after dissolution, as permitted in the Alabama Limited Liability Company Law of 2014 (the “2014 Act”).

The Taxpayer’s representative relied on Ala. Code § 10A-5A-7.01 (part of the 2014 Act). However, the 2014 Act did not become effective until January 1, 2015, for new LLCs, and January 1, 2017, for all other LLCs. Therefore, for the year at issue, 2014, the previous limited liability company law was still in effect.

The previous law, § 10A-5-7.01, states that “[a] limited liability company is dissolved and its affairs shall be wound up upon occurrence of the first of the following events:

- (1) Events specified in the governing documents.
- (2) Written consent of all members to dissolve.
- (3) When there is no remaining member, [with exception]
- (4) When the limited liability company is not the successor limited liability company in the merger or consolidation with one or more limited liability companies or other entities.
- (5) Entry of a decree of judicial dissolution under Section 10A-5-7.02.”

The Taxpayer did not provide governing documents, thus dissolution under item (1) could not be proven. The Taxpayer’s representative and the Taxpayer member testified that there was no written consent by all (both) members to dissolve; he spoke to one member on the telephone who directed him to dissolve the entity. Thus, item (2) does not apply. There were still the two members, there was no merger or consolidation, and there was no decree of judicial dissolution. Therefore, the Taxpayer was not dissolved under the Alabama Limited Liability Company Act on December 31, 2013.

The Taxpayer has not shown that it dissolved or otherwise ceased to exist before January 1, 2014. Therefore, according to § 40-14A-22(a), the business privilege tax accrued for 2014.

The penalties are waived for reasonable cause. The final assessment, less the penalties, is affirmed. Judgment is entered against the Taxpayer for 2014 tax and interest of \$115.60. Additional interest is also due from the date the final assessment was entered on July 16, 2018.

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

Entered July 12, 2019.

/s/ Leslie H. Pitman

LESLIE H. PITMAN

Associate Tax Tribunal Judge

lhp:dr

cc: Larry E. Armstrong, CPA
Margaret Johnson McNeill, Esq.