

ROBINSON RENTALS, LLC §
ROBINSON BIRMINGHAM RENTALS, LLC §
150 E. Ponce De Leon Ave., Suite 330 §
Decatur, GA 30030-2543, §

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayers,

DOCKET NO. B.P. 03-647

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

FINAL ORDER

The Revenue Department assessed business privilege tax against Robinson Rentals, LLC for 2001 and 2002, and also against Robinson Birmingham Rentals, LLC for 2001. The Taxpayers appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on December 18, 2003. The Taxpayer's representative was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Ron Bowden represented the Department.

Both Taxpayers qualified to do business in Alabama with the Alabama Secretary of State on February 20, 2001. They filed their initial Alabama business privilege tax returns for 2001 on July 18, 2001, and paid \$50 with each return. Robinson Rentals, LLC subsequently filed its 2002 business privilege return on January 23, 2002, but failed to pay any amount with the return.

Code of Ala. 1975, §40-14A-22(c) provides that the minimum Alabama business privilege tax "shall not be less than \$100." Consequently, the Department assessed the Taxpayers for additional 2001 privilege tax of \$50 each. It also assessed both Taxpayers for interest and the failure to timely file and failure to timely pay penalties because their initial returns were delinquent. Code of Ala. 1975, §40-14A-25(a) requires that a taxpayer's

initial business privilege tax return is due 30 days after the taxpayer qualifies to do business in Alabama. As indicated, the Taxpayers qualified with the Alabama Secretary of State on February 20, 2001. They did not file their initial returns until July 18, 2001. Consequently, the returns were delinquent.

The Department also assessed Robinson Rentals, LLC for the minimum \$100 business privilege tax due for 2002, plus interest and a late payment penalty.

The Taxpayers contend that they do not owe the tax in question because they never transacted business in Alabama during the years in issue. The Department correctly argues, however, that the business privilege tax is a tax on the privilege of doing business in Alabama, regardless of whether any business is actually conducted.¹ Code of Ala. 1975, §40-14A-22(a) levies the 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 taxpayer shall be liable for the tax levied by this article for each year beginning before the taxpayer has been dissolved or otherwise ceased to exist or has withdrawn or forfeited its qualification to do business in Alabama.” Because both Taxpayers were qualified to do business in Alabama in the subject years, they were liable for the minimum business privilege tax in those years. The late filing and payment penalties were also correctly assessed. Interest is required by statute. Code of Ala. 1975, §40-1-44.

¹ In that regard, the current business privilege tax is like Alabama’s defunct franchise tax, which was “imposed upon corporate existence, not corporate activity or exerted corporate function.” *State, Dept. of Revenue v. Forrester*, 419 So.2d 231, 233 (Ala.Civ.App. 1982) citing *State v. Bradley*, 93 So. 595, 597 (Ala. 1922).

The final assessments are affirmed. Judgment is entered against Robinson Rentals, LLC for 2001 and 2002 tax, penalty, and interest of \$120.27 and \$138.93, respectively; and against Robinson Birmingham Rentals, LLC for 2001 tax, penalty, and interest of \$120.27. Additional interest is also due from the date of entry of the final assessments, September 19, 2003.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered December 19, 2003.