

WWD, INCORPORATED 2415 Rainbow Drive Anniston, AL 36207-0324, Taxpayer, v. STATE OF ALABAMA DEPARTMENT OF REVENUE.	§ § § § §	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION DOCKET NO. CORP. 04-149
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FINAL ORDER

The Revenue Department assessed WWD, Inc. (“Taxpayer”) for corporate income tax for the short year ending July 10, 2002. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on May 20, 2004. CPA Larry Armstrong represented the Taxpayer. Assistant Counsel Mark Griffin represented the Department.

The issue in this case is whether a net operating loss (“NOL”) claimed by the Taxpayer on its short year return for August 1, 2001 through July 10, 2002 should be disallowed pursuant to Code of Ala. 1975, §40-18-35.1(7). That statute prohibits a corporation from claiming an NOL in any tax year that began in calendar year 2001. There is an exception, however, for “a corporation dissolved and completely liquidated within calendar year 2001. . .”

The Taxpayer was dissolved and completely liquidated on July 10, 2002. It subsequently claimed an NOL on its final Alabama return for the short year August 1, 2001 through July 10, 2002. The Department disallowed the NOL pursuant to §40-18-35.1(7), and based thereon entered the final assessment in issue.

The Alabama Legislature suspended all corporate NOLs for one year pursuant to §40-18-35.1(7) as a stopgap revenue measure. The statute prohibits a corporation from

claiming an NOL deduction on any calendar year 2001 return or any fiscal year return for a tax year beginning in calendar year 2001. The life of all NOL deductions was also extended by one year.

The Legislature only intended that all corporate NOLs would be suspended for one year. It did not intend that the one-year suspension would cause a corporation to lose the deduction. Consequently, the last sentence of §40-18-35.1(7) provides that the suspension shall not apply to a corporation “dissolved and completely liquidated within the calendar year 2001.”

The obvious intent of the last sentence of §40-18-35.1(7) was to insure that a corporation would not lose an NOL deduction if it dissolved and completely liquidated in the tax year in which the one-year suspension applied, i.e., in calendar year 2001 or in a fiscal year beginning in 2001. Unfortunately, as worded, the exception applies only to corporations that were dissolved and completely liquidated in calendar year 2001. It does not refer to corporations that were dissolved in 2002 during a tax year that began in calendar year 2001. Consequently, if the language of the statute is strictly applied, a corporation that liquidated in 2002 before the close of a fiscal year that began in 2001, as in this case, would forever lose the NOL. That clearly was not intended by the Legislature.

The guiding rule of statutory construction is that a statute must be construed to reflect the intent of the Legislature. *Gholston v. State*, 620 So.2d 719 (Ala. 1993). As a general rule, the plain language of a statute must be followed, but “this plain-meaning rule should not be applied to produce a result which is actually inconsistent with the policies underlying the statute.” *Bailey v. USX Corp.*, 850 F.2d 1506, 1509 (11th Cir. 1988). Further, “a literal construction of a statute cannot be permitted to defeat the spirit and

intention of the legislative act.” *Kirkland v. State*, 529 So.2d 1036, 1038 (Ala. Civ. App. 1988). “Statutory construction requires that the letter of the statute yield to the true meaning and intent of the lawmakers (citation omitted) . . . thus, ‘all rules of construing statutes must be regarded as subservient to the end of determining the legislative intent.’” *Kirkland*, 529 So.2d at 1038 (citation omitted). Finally, a statute should not be literally construed if such construction would lead to absurd or unintended results. *Sizemore v. Franco Distributing Co., Inc.*, 594 So.2d 143 (Ala. Civ. App. 1991).

The last sentence of §40-18-35.1(7) should be construed in accordance with its intended purpose. Consequently, a corporation should be allowed to claim an NOL if it was liquidated in 2002 during a fiscal year that began in 2001. Otherwise, the corporation would forever lose the deduction. A corporation with a fiscal year beginning in 2001 would be allowed to claim an NOL if it was dissolved and completely liquidated on or before December 31, 2001, but not if it was dissolved and completely liquidated on January 1, 2002 or later during the fiscal year. Certainly, the drafters of the statute did not anticipate nor did the Legislature intend such an arbitrary, unfair, and unintended result. As stated by Justice Frankfurter, “[e]ven tax administration does not as a matter of principle preclude considerations of fairness.” *Angelus Milling Co. v. Comm. of Int. Rev.*, 65 S.Ct. 1162, 1165 (1945).

The NOL claimed by the Taxpayer on its short year return for the fiscal year beginning August 1, 2001 should be allowed because the Taxpayer would otherwise

forever lose the deduction.¹ The final assessment in issue is accordingly voided.

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

Entered June 15, 2004.

BILL THOMPSON
Chief Administrative Law Judge

¹Section 40-18-35.1(7) was previously addressed by the Administrative Law Division in three cases, *Genesys Conferencing of Georgia, Inc. v. State of Alabama*, Corp. 03-616 (Admin. Law Div. 4/2/04); *Peacock Timber Transport, Inc. v. State of Alabama*, Corp. 03-1110 (Admin. Law Div. 3/29/04); *Powell Self Properties, Inc. v. State of Alabama*, Corp. 03-506 (11/13/03).

In *Genesys Conferencing*, the taxpayer merged into its parent on July 31, 2001. It then claimed an NOL on its return for the short year January 1, 2001 through August 1, 2001. The Department disallowed the NOL. The taxpayer objected, arguing that a statutory merger was the legal equivalent of a dissolution and complete liquidation. The Administrative Law Division rejected the taxpayer's argument, holding that the exception in §40-18-35.1(7) applies only to a corporation that was dissolved and completely liquidated. The NOL also survived the merger, and thus could subsequently be claimed by the taxpayer's parent corporation. The holding in *Genesys Conferencing* is not affected by the holding in this case.

In *Peacock Timber*, the corporation incurred a loss in 2000 which it carried over as an NOL to 2001. The Department disallowed the NOL pursuant to §40-18-35.1(7). The corporation argued that it was unfair to tax it on its income in 2001, but not allow it to carryover a loss incurred in 2000. (The corporation incurred a net loss over the two years.) The Administrative Law Division recognized that the result was harsh, but affirmed the disallowance of the NOL as required by the statute. The corporation could, of course, claim the NOL in subsequent years. The result in *Peacock Timber* is not affected by the holding in this case.

In *Powell Self Properties, Inc.*, the Administrative Law Division disallowed an NOL claimed by the corporation on its 2001 Alabama return. The corporation was clearly prohibited from doing so by §40-18-35.1(7). That result also is not affected by the holding in this case.