

PAMELA ADAMS	§	STATE OF ALABAMA
THE SOLE MEMBER OF		DEPARTMENT OF REVENUE
SHADOWBROOK WALKER BINGO, LLC,	§	ADMINISTRATIVE LAW DIVISION
A DISREGARDED ENTITY		
27948 HIGHWAY 118	§	
CARBON HILL, AL 35549,		
	§	
Taxpayer,		DOCKET NO. S. 11-695
	§	
v.		
	§	
STATE OF ALABAMA		
DEPARTMENT OF REVENUE.	§	

OPINION AND PRELIMINARY ORDER

The Revenue Department assessed Pamela Adams (“Taxpayer”), as the sole member of Shadowbrook Walker Bingo, LLC, a disregarded entity, for State sales tax for March through October 2009. 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 December 1, 2011. The Taxpayer attended the hearing. Assistant Counsel David Avery represented the Department.

The Taxpayer and her husband have owned and operated the Shadowbrook Inn, a motel in Walker County, Alabama, since approximately 2000. The Taxpayer testified at the December 1 hearing that she and her husband have been represented by attorney Robert Barnett since the early 1990’s. The Taxpayer explained that Barnett formed the limited liability company in issue for her in early 2009. The LLC was formed for the purpose of operating an electronic bingo hall, Shadowland Walker Bingo, adjacent to the Taxpayer’s hotel in Walker County.

The bingo hall opened in March 2009. Although the Taxpayer is the sole member of the LLC, she claims that she did not work at and never received any money from the bingo

operation. She testified, however, that she was frequently at the bingo hall, and observed soon after it opened that “there wasn’t no paperwork” being done by the bingo hall manager, Brandon Smith, Barnett’s step-son.

The Taxpayer claims that she notified Barnett that Smith was not keeping the proper paperwork at the bingo hall. According to the Taxpayer, Barnett responded that he would handle everything. The Taxpayer later informed Barnett that Smith was stealing from the bingo hall. Barnett denied the assertion, and again told the Taxpayer that he would handle everything. He never did, according to the Taxpayer.

The Walker County Circuit Court declared electronic bingo to be an illegal lottery in October 2009. See, *Baker, et al, v. Walker County Bingo, et al.*, CV2007-0400. The Taxpayer’s bingo hall closed at that time.

The Department subsequently assessed the LLC, and the Taxpayer and Robert Barnett, individually, as its members, for the estimated sales tax owed by the bingo hall. The Department computed the amount of tax due based on the best information available, although it is not in evidence what that information consisted of. The Taxpayer objected to Barnett being listed on the final assessment as an LLC member. She explained at the December 1 hearing that she was afraid that if Barnett was listed as an LLC member on the final assessment, he would somehow be able to take over her motel. The Department’s Taxpayer Advocate subsequently issued a Taxpayer Assistance Order on August 4, 2011 voiding the final assessment showing Barnett as an LLC member. The Department then entered the final assessment in issue against the LLC and the Taxpayer, as sole member of the LLC, a disregarded entity. The Taxpayer timely appealed.

There is no evidence indicating what best information available the Department used in estimating the sales tax owed by the Taxpayer for the subject period. In any case, the Taxpayer did not dispute the amount of the final assessment at the December 1 hearing. Rather, she argued that Barnett's step-son controlled and took all of the bingo receipts, that she received nothing from the business, and consequently, that she should not be held liable for the sales tax due. "I never made 1 cent at the Shadowbrook Walker Bingo Hall. Bob Barnett said he would settlement-up with me at the end." Taxpayer's notice of appeal at 3. As indicated, the Taxpayer claims that Barnett never did.

Because Shadowbrook Walker Bingo, LLC, is a single member LLC, with the Taxpayer as the sole member, the entity is disregarded for Alabama tax purposes. The Taxpayer, as the sole member, is thus responsible for any liabilities of the LLC, including its sales taxes.¹

There is, however, another issue to be resolved that may have a bearing on the Taxpayer's liability for the sales tax in issue. That issue involves the sale tax "bingo" exemption at Code of Ala. 1975, §40-23-4(a)(43), which exempts bingo receipts from the gross receipts sales tax levied at Code of Ala. 1975, §40-23-2(2), but only if certain conditions and requirements are satisfied.

The Walker County Circuit Court ruled in October 2009 that the electronic bingo machines of the type used at the Taxpayer's bingo hall constituted an illegal lottery. If that

¹ The Taxpayer cites *State of Alabama v. John R. Kingsley*, Jefferson County Circuit Court, CV-2010-901445, in support of her claim that a member of an LLC is not liable for the non-income taxes owed by the LLC. *Kingsley* is presently on appeal to the Jefferson County Circuit Court. This case involves a disregarded single member LLC, and thus can be distinguished from the *Kingsley* case, which held that the members of a multi-member LLC were not personally liable for the non-income taxes owed by the LLC.

holding is applied retroactively to the Taxpayer's pre-October 2009 electronic bingo operations, then the §40-23-4(a)(43) exemption could never apply, even if the various conditions and requirements of the exemption statute were satisfied, because the operations would not have constituted bingo.

If, however, the October 2009 ruling is applied prospectively only, then the exemption could apply if the Taxpayer could prove that her bingo hall satisfied all of the conditions and requirements of the exemption.

A case is currently pending before the Administrative Law Division in which the above issue has been raised and briefed by the parties. *Walker County Entertainment, LLC v. State of Alabama*, Docket No. S. 10-379. The Administrative Law Division will decide the issue in that case in due course. This case, which involves the same issue, will be held in abeyance until the issue is finally decided in Docket No. S. 10-379. Appropriate action will then be taken in this case.

Entered January 12, 2012.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Margaret Johnson McNeill, Esq.
Pamela Adams
Joe Walls
Mike Emfinger