APPLE ASSOCIATES, LTD. P.O. BOX 130021 BIRMINGHAM, AL 35213,	§	STATE OF ALABAMA DEPARTMENT OF REVENUE ADMINISTRATIVE LAW DIVISION
Taxpayer,	§	DOCKET NO. BPT. 12-244
v.	§	
STATE OF ALABAMA DEPARTMENT OF REVENUE.	§	

FINAL ORDER

The Revenue Department assessed Apple Associates, LTD ("Taxpayer") for 2008, 2009, and 2010 business privilege tax. 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 June 28, 2012. Michael Applebaum represented the Taxpayer. Assistant Counsel Christy Edwards represented the Department.

The Taxpayer filed its articles of organization as a domestic limited partnership with the Alabama Secretary of State's Office on August 14, 1992. It failed to file business privilege tax returns for the subject years. The Department consequently assessed the Taxpayer for the tax due for those years, plus penalties and interest.

The Taxpayer's general partner, Michael Applebaum, argued at the June 28 hearing that the Taxpayer is not subject to the Alabama business privilege tax because it is not a "limited liability entity," as that term is defined at Code of Ala. 1975, §40-14A-1(k). Specifically, he contends that a limited liability entity is defined as any entity "offering limited liability to the owners of the entity." He claims that as the Taxpayer's general partner, he is liable for the debts of the partnership. Consequently, because he is one of the Taxpayer's owners, but does not have limited liability, the Taxpayer cannot be a limited liability entity as defined by §40-14A-1(k). I disagree.

Section 40-14A-1(k) defines "limited liablity entity" as follows:

> Any entity, other than a corporation, organized under the laws of this or any other jurisdiction through which business may be conducted while offering limited liability to the owners of the entity with respect to some or all of the obligations of the entity and which is taxable under subchapter K of the Code, including, without limitation, limited liability companies, registered limited liability partnerships, and limited partnerships.

The Taxpayer is a limited partnership, and thus offers limited liability to at least some of the owners, i.e., the limited partners in the partnership. That is sufficient to satisfy the definitional requirement that the entity must "offer(ing) limited liability to the owners."

All limited partnerships have a general partner, or partners, that does not have limited liability. Consequently, if the Taxpayer's representative is correct, then no limited partnership could be a limited liability entity for purposes of the business privilege tax. That clearly is not the case because §40-14A-1(k) specifies that the term "limited liability entity" includes "limited liability companies, registered limited liablity partnerships, and *limited partnerships*." (emphasis added)

Because the Taxpayer was a limited liability partnership, and thus subject to the business privilege tax during the years in issue, the final assessments in issue are affirmed. Judgment is entered against the Taxpayer for 2008, 2009, and 2010 business privilege tax, penalties, and interest of $191.43, $185.86, and $179.83, respectively. Additional interest is also due from the date the final assessments were entered, January 17, 2012.

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

Entered July 12, 2012.

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BILL THOMPSON
Chief Administrative Law Judge

bt:dr
cc: Kelley A. Gillikin, Esq.
Michael S. Applebaum
Cathy McCary