

PHR SOLUTIONS LLC
5740 OAKWILD DRIVE
MONTGOMERY, AL 36117,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. BPT. 13-705

FINAL ORDER

The Revenue Department assessed PHR Solutions LLC (“Taxpayer”) for 2012 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 February 4, 2014. James Brown represented the Taxpayer. Assistant Counsel Margaret McNeill represented the Department.

The Taxpayer filed its articles of organization with the Alabama Secretary of State’s Office on June 30, 2009. It filed its Articles of Dissolution on June 24, 2013. The Articles of Dissolution indicated on page 2 that “[t]he effective date of the Articles of Dissolution (was) 12/31/2010.”

The Taxpayer failed to file a 2012 business privilege tax return. The Department consequently assessed the Taxpayer for the tax due for that year, plus penalties and interest.

The Taxpayer’s representative testified at the February 4 hearing that the Taxpayer did not conduct any business in Alabama after 2010. He also argued that the effective date of the LLC’s dissolution was the December 31, 2010 date specified on page 2 of the Articles of Dissolution. He thus contended that because the LLC was dissolved before 2012, it does not owe the Alabama business privilege tax for that year.

Code of Ala. 1975, §10-12-42 is a part of the Limited Liability Company Act, §10-12-1 et seq., and is titled “Articles of Dissolution.” The statute provides that articles of dissolution shall be filed in the appropriate probate judge’s office, and shall include “[t]he effective date of the articles of dissolution, which shall be a date certain, if they are not to be effective immediately,” see §10-12-42(a)(4).

The Taxpayer’s representative argues that the effective date of dissolution is the date shown on the Articles of Dissolution form, and that Alabama law does not prohibit the backdating of a dissolution effective date on the form to a date before the Articles are filed with the probate judge. I disagree.

A reasonable and correct interpretation of §10-12-42(a)(4) is that an LLC is effectively dissolved either immediately upon the filing of the appropriate form, or on a future date certain as specified on the dissolution form.

The Legislature could not have intended to allow for the backdating of an effective dissolution date because it would lead to unintended and unreasonable results. For example, assume an LLC filed its articles of organization in Alabama on January 1, 2006. The LLC thereafter had the privilege of doing business in Alabama and paid the annual business privilege tax in each year. The LLC then filed its Articles of Dissolution on January 1, 2014 showing an effective dissolution date of January 1, 2006. If the Taxpayer’s position is correct, the LLC in the above example would have effectively dissolved on the same day it was organized, in which case it would be entitled to a refund of the business privilege tax it paid during the years it existed and operated in Alabama. Clearly that result could not have been intended by the Legislature. A statute should not

be construed in such a way as to lead to an absurd or unintended result. *Sizemore v. Franco Distributing Co., Inc.*, 594 So.2d 143 (Ala. Civ. App. 1991).

The fact that the LLC did not conduct any business in Alabama in 2012 also is of no consequence. The Alabama business privilege tax is on the privilege of doing business in Alabama, whether any business is actually conducted. Code of Ala. 1975, §40-14A-22.

The final assessment is affirmed. Judgment is entered against the Taxpayer for 2012 tax and interest of \$104. Additional interest is also due from the date the final assessment was entered, July 16, 2013. The penalties are waived for reasonable cause.

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

Entered February 6, 2014.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: Margaret Johnson McNeill, Esq.
James Brown
Cathy McCary