

**ALABAMA TAX TRIBUNAL**

BERMUDA FARMS LLC,	§	
Taxpayer,	§	DOCKET NO. BPT. 24-0042-LP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

**FINAL ORDER**

This appeal involves the entry of a final assessment of business privilege tax for 2023.

The Alabama Department of Revenue filed its Answer to the Taxpayer’s Notice of Appeal. In its Answer, the Revenue Department stated that the Department did not receive the Taxpayer’s form BPT-E with its business privilege tax return. The Tax Tribunal then entered a Preliminary Order on May 9, 2024, directing the Taxpayer to provide evidence that it had submitted its form BPT-E to the Revenue Department within 30 days. The May 9, 2024, Preliminary Order also included a provision that the Taxpayer’s refusal to comply with the Order would result in the Revenue Department’s final assessment being affirmed. No such documentation, nor any other response, has been received by the Tax Tribunal as of the date of this Order.

Further, the Taxpayer here sought treatment as an Electing Family Limited Liability Entity (hereinafter “family LLE”), which necessitated the inclusion of form BPT-E in the Taxpayer’s 2023 return pursuant to Ala. Code § 40-14A-1(h)(2) and Ala. Admin. Code r. 810-2-8-.05. *See J&WWGT Co., LLC, v. Ala. Dep’t of Revenue*, BPT.

19-224-LP (Ala. Tax Trib. Aug. 13, 2019). Ala. Code § 40-14A-1(h)(2) requires an LLC to elect to be taxed as a family LLE “in a manner prescribed by the department . . . .” The manner prescribed by the Revenue Department is found in Ala. Admin. Code r. 810-2-8-.05. Ala. Admin. Code r. 810-2-8-.05(1) requires the entity seeking to qualify as a family LLE to file with the Revenue Department an annual election to be taxed as a family LLE (Form BPT-E) “for the taxable year represented by the Business Privilege Tax return.” Ala. Admin. Code r. 810-2-8-.05(2) requires that this form be filed “on or before the due date of the return[.]” Ala. Admin. Code r. 810-2-8-.05(3) then mandates that the entity include within the form the following information:

- (a) Name and FEIN of the taxpayer;
- (b) A statement that the profits and capital interests of the entity were calculated using the constructive ownership rules of 26 U.S.C. Section 318, without regard to the 50% limitation contained in 26 U.S.C. Section 318(a)(2)(C) and 26 U.S.C. Section 318(a)(3)(C);
- (c) Indication whether the entity meets the gross receipts test, the assets test, or both by completing the Electing Family Limited Liability Election Form in its entirety; and
- (d) Signature of the taxpayer or authorized representative.

A Revenue Department regulation must be followed unless it is contrary to or inconsistent with a statute, or if it is unreasonable. *See Ex parte White*, 477 So.2d 422 (Ala. 1985). The regulation applicable here, Ala. Admin. Code r. 810-2-8-.05, is not contrary to or inconsistent with any statute, nor is it unreasonable. The regulation applicable here properly requires LLCs to timely file the form with the return, or at least on or before the due date of the return, as required by Ala. Code § 40-14A-1(h)(2).

As discussed, Ala. Code § 40-14A-1(h)(2) requires an LLC seeking treatment as a family LLE to file a Form BPT-E, “on or before” the due date of the return. Consequently, family LLE status cannot be allowed in this case. While the Taxpayer

contends that the election was completed on the form, it was in fact not filed then, and the Taxpayer has failed to produce evidence that it was filed at all.

Therefore, the 2023 business privilege tax final assessment is affirmed. Judgment is entered against the Taxpayer for 2023 tax, penalty, and interest of \$1,655.78, consisting of an outstanding tax balance of \$1,451.09, pre-final assessment interest of \$54.63, and a late payment penalty of \$150.06, plus additional interest that continues to accrue from the date the final assessment was entered until paid in full.

This Final Order may be appealed to circuit court within 30 days, pursuant to Ala. Code § 40-2B-2(m).

Entered August 14, 2024.

/s/ Leslie H. Pitman

LESLIE H. PITMAN

Associate Judge

Alabama Tax Tribunal

lhp:thb

cc: John D. DeLoach  
Bermuda Farms LLC  
Ralph M. Clements III, Esq.