

ALABAMA DEPARTMENT OF REVENUE
REVENUE RULING 00-001

This document may not be used or cited as precedent. Code of Alabama (1975), § 40-2A-5(a).

TO: Company A

FROM: Commissioner of Revenue
Alabama Department of Revenue

DATE: January 31, 2000

RE: Application of annual business privilege tax to a limited partnership which plans to construct and operate an electric generating plant producing electricity for the wholesale market exclusively and that will not be or hold itself out to be a public utility.

FACTS

The facts as stated by Company A are as follows:

Company A is a foreign limited partnership that has qualified to do business in Alabama (“the Limited Partnership”). The Limited Partnership plans to construct and operate in Alabama an electric generating plant (“the Facility”), the production from which will be utilized in the wholesale energy market exclusively.

The Limited Partnership’s operation of the Facility will be conducted pursuant to a long-term contract (20-year minimum term) for the benefit of a single wholesale customer (“the Customer”). In no event will the Limited Partnership sell any output of the Facility to the public or hold itself out to serve, nor will the Limited Partnership actually serve, the public. The Limited Partnership will have no duty or obligation to serve the general public. Neither the Limited Partnership nor the Customer is a public utility subject to regulation by the Alabama Public Service Commission (“the APSC”). No affiliate of the Limited Partnership is a public utility subject to regulation by the APSC.

ISSUE

What is the maximum amount of the business privilege tax that will be payable annually by the Limited Partnership?

ANALYSIS

During the 1999 Second Extraordinary Session of the Alabama Legislature, the Legislature enacted 1999 Ala. Acts 665 adding Chapter 14A, which is identified as the Alabama Business Privilege and Corporate Share Tax Act of 1999, to Title 40, Article 2 of the Code of Alabama (1975). The act imposes an annual privilege tax upon “every corporation, limited liability entity, and disregarded entity doing business in Alabama or organized under the laws of Alabama.” § 40-14A-21(a), Code of Alabama (1975).

Entities that have property assessed for ad valorem tax purposes pursuant to the provisions of Chapter 21 of Title 40 and that are obligated to serve the public are subject to payment of the maximum annual amount of business privilege tax provided by § 40-14A-22(d)(2), rather than the lower maximum annual amount set forth in § 40-14A-22(d)(1), applicable to entities subject to the privilege tax generally. Sections 40-14A-22(d)(1) and 40-14A-22(d)(2) provide, in pertinent part:

“(1) Except as provided in subdivision (2), the privilege tax levied by this article shall not exceed \$15,250 for any taxpayer for the taxable year beginning January 1, 2000. For each taxable year thereafter, the maximum tax shall not exceed \$15,000 for any taxpayer, except as provided in subdivision (2).

“(2) With respect to any . . . (iii) corporation, company or association whose property is assessed for taxation pursuant to the provisions of chapter 21 of this title unless such corporation has no obligation to serve the general public, the privilege tax levied by this article shall not exceed \$3,000,000, for any taxpayer each year . . .”

Although the Limited Partnership’s property has not been assessed for ad valorem tax purposes pursuant to the provisions of Chapter 21 of Title 40, the Limited Partnership will not in any event be obligated to serve the public. The Limited Partnership will, therefore, be subject to the maximum annual amount of business privilege tax provided by § 40-14A-22(d)(1) for entities subject to the tax generally.

The Limited Partnership is a limited liability entity to which the privilege tax levied under Article 2 of Chapter 14A of Title 40 applies. If the Limited Partnership’s property is assessed for ad valorem tax purposes pursuant to the provisions of Chapter 21 of Title 40, the \$3,000,000 maximum amount of the annual privilege tax provided by § 40-14A-22(d)(2) would apply to the Limited Partnership, but only if the Limited Partnership has an obligation to serve the general public. The

exclusion from the higher \$3,000,000 maximum annual amount of the privilege tax applies to corporations, companies or associations whose property is also assessed for ad valorem tax purposes pursuant to the provisions of Chapter 21 of Title 40 and who have no obligation to serve the general public.

Although the Limited Partnership is not a corporation, it is a limited liability entity subject to the privilege tax, and the omission of the words “company or association” from the last clause of § 40-14A-22(d)(2)(iii) quoted above is not significant because the use of the word “such” before the word “corporation” is clearly intended to reference those entities referred to in the preceding clause, i.e., any “corporation, company or association,” into which classification the Limited Partnership falls.

RULING

Because the Limited Partnership is represented as having no obligation to serve the general public, the amount of the privilege tax payable by the Limited Partnership annually will be limited to the lower maximum annual amount provided in § 40-14A-22(d)(1), Code of Alabama (1975), for entities subject to the privilege tax generally, and not the maximum amount thereof provided in § 40-14A-22(d)(2), Code of Alabama (1975).

ALABAMA DEPARTMENT OF REVENUE

By: _____

George E. Mingledorff III
Commissioner (Acting)

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