Rel: September 4, 2026

ALABAMA COURT OF CIVIL APPEALS

SPECIAL TERM, 2026

CL-2025-0254

Pfizer, Inc.

v.

Alabama Department of Revenue

CL-2025-0278

Alabama Department of Revenue

v.

Pfizer, Inc.

Appeals from Montgomery Circuit Court
(CV-22-901481)

MOORE, Presiding Judge.

Following an audit, the Alabama Department of Revenue ("the Department"), pursuant to Ala. Code 1975, § 40-18-35(b) ("the Alabama add-back statute"), disallowed deductions Pfizer, Inc., had taken on certain Alabama corporate income-tax returns for interest and royalty payments it had made to foreign affiliates. Pfizer appealed to the Alabama Tax Tribunal ("the Tax Tribunal"), which overturned the Department's decision. The Department, in turn, appealed to the Montgomery Circuit Court ("the trial court"), which, after a trial de novo, reversed the Tax Tribunal's order and sealed the trial transcript and exhibits. Pfizer appeals from the trial court's judgment reinstating the Department's decision, and the Department cross-appeals from the judgment sealing the trial transcript and exhibits.

The Appeal

Pfizer is a multinational corporation that transacts business in Alabama. As such, Pfizer is required to file annual corporate income-tax returns in this state. The Department audited those tax returns for several years, including the 2012 tax year. The parties subsequently agreed to use the 2012 tax year as the "test year" for purposes of all the years under audit. In its 2012 corporate tax return, Pfizer, pursuant to an exception to the Alabama add-back statute, deducted from its income an interest payment that it said it had made to an affiliate corporation located in Ireland ("the Irish affiliate").

The Alabama add-back statute provides, among other things, that, for the purpose of computing taxable income, a corporation generally must "add back otherwise deductible interest expenses and costs and intangible expenses and costs directly or indirectly paid ... to ... one or more related members ...." § 40-18-35(b)(1). However, as one exception to that general rule, a corporation need not add back an otherwise deductible interest expense or cost or an intangible expense or cost if the corporation shows that the interest payment or intangible expense was

> "subject to a tax based on or measured by the related member's net income by a foreign nation which has in force an income tax treaty with the United States, if the recipient was a 'resident' (as defined in the income tax treaty) of the foreign nation. For purposes of this section, subject to a tax based on or measured by the related member's net income means that the receipt of the payment by the recipient related member is reported and included in income for purposes of a tax on net income, and not offset or eliminated in a combined or consolidated return which includes the payor."

§ 40-18-35(b)(1)b.

Based on documents the parties submitted, the Tax Tribunal determined that the "subject-to-tax exception" set forth in § 40-18-35(b)(1)b. applied, and it ordered the Department to allow the deduction for the interest payment. The Department appealed the final administrative order the Tax Tribunal entered to the trial court, pursuant to Ala. Code 1975, § 40-2B-2(m). In compliance with § 40-2B-2(m)(4) ("The appeal to circuit court from a final or other appealable order issued by the Alabama Tax Tribunal shall be a trial de novo, except that the order shall be presumed prima facie correct and the burden shall be on the appealing party to prove otherwise."), the trial court conducted a trial de novo and entered a judgment determining that the subject-to-tax exception did not apply. Pfizer timely appealed, and this court held oral argument on April 14, 2026.

The evidence before the trial court showed that the Irish affiliate did not make any loans to entities other than Pfizer and its related members, that Pfizer's treasury department made the lending decisions for the Irish affiliate, that the Irish affiliate did not have any employees, and that the Irish affiliate had no assets of its own. To fund the loans to Pfizer and its related members, the Irish affiliate relied completely on loans from three other related members of Pfizer that were located in Luxembourg ("the Luxembourg affiliates"). The Luxembourg affiliates loaned the Irish affiliate the funds to loan to Pfizer and its related members, and the Luxembourg affiliates charged the Irish affiliate interest on those loans. In 2012, the Irish affiliate reported its income on its Ireland corporate tax return, which included the interest payment it had received from Pfizer, as well as interest payments that it had received on a loan it had made to another Pfizer related member. In turn, the Irish affiliate deducted from that income the interest payments that it had made to the Luxembourg affiliates, which had funded those loans. After further deducting operating expenses, the Irish affiliate reported a relatively miniscule net income on which it paid Irish corporate income tax. It was undisputed that the interest payments the Irish affiliate paid to the Luxembourg affiliates in 2012 were treated as dividends and were not subject to income tax under Luxembourg law.

Based on the evidence, the trial court determined that, although Pfizer had directly made the 2012 interest payment to the Irish affiliate, that interest payment was passed on to the Luxembourg affiliates, except for the minimal amount of corporate income tax that the Irish affiliate paid in Ireland. The trial court concluded, among other things:

> "[The Irish affiliate] passed through virtually all of the interest it received from [Pfizer] to [the] Luxembourg [a]ffiliates making it 'indirectly' paid as that term is used in Ala. Code [1975,] § 40-18-35(b)(1)[,] from [Pfizer] to those Luxembourg [a]ffiliates. However, the Luxembourg [a]ffiliates received those payments as interest payments qualifying as dividends. However, an interest payment qualifying as a dividend does not meet the definition of 'intangible expenses and costs' set forth in Ala. Code [1975,] § 40-18-1(17).
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> "... [T]he subject-to-tax exception of Ala. Code [1975,] § 40-18-35(b)(1)[,] require[d] [Pfizer] to establish that the recipient was either subject-to-tax on the 'intangible expenses and costs' received or that 'the intangible expenses and costs' were paid by a related member to another directly or indirectly, that is not a related member. Because the receipts were classified by the Luxembourg [a]ffiliates as interest payments qualifying as dividends, the exceptions to add-back in this indirect transaction are inapplicable."

In summary, the trial court determined that Pfizer had indirectly paid the 2012 interest payment to the Luxembourg affiliates, which reclassified the 2012 interest payment as a dividend, which was not subject to taxation. Thus, the trial court reasoned, Pfizer did not qualify for the subject-to-tax exception to the Alabama add-back statute.

Pfizer first challenges the factual findings of the trial court regarding the transactions involved. "In a case in which the evidence is presented to a trial court ore tenus, such as this one, the findings of a trial court are presumed correct and will not be set aside unless they are plainly and palpably wrong or unjust." Tibbs v. Anderson, 580 So. 2d 1337, 1339 (Ala. 1991). In this case, the trial court heard from witnesses whose testimony established that the Irish affiliate was essentially a shell corporation Pfizer controlled. See Butler v. MaxiStorage, Inc., 33 So. 3d 1221, 1223 n.3 (Ala. Civ. App. 2009) (characterizing a shell corporation as a corporation with no assets). Pfizer used the Irish affiliate as an intercompany lending institution. The Luxembourg affiliates loaned the Irish affiliate funds, which the Irish affiliate then loaned to Pfizer and its related members. When Pfizer and its related members paid interest on those loans, the interest was paid directly to the Irish affiliate, which, in turn, paid it to the Luxembourg affiliates as interest that the Luxembourg affiliates treated as nontaxable dividends. The trial court heard evidence indicating that, in 2012, the Irish affiliate received a certain number of interest payments from Pfizer and its related members and that it paid the Luxembourg affiliates almost that exact amount in interest. From that evidence, the trial court inferred that Pfizer had indirectly paid the Luxembourg affiliates the 2012 interest payment. We cannot say that the trial court was plainly and palpably wrong in reaching such an inference.

Pfizer nevertheless argues that the trial court erred in failing to apply the subject-to-tax exception because, as it points out, the direct transaction between it and the Irish affiliate was subject to taxation, however minimal, in Ireland. Section 40-18-35(b)(1) establishes a general rule that any interest payments or other intangible expenses indirectly paid to a related member must be added back to taxable income. The subject-to-tax exception applies only when the interest payment or other intangible expense is subject to tax in the country of the "recipient" related member. § 40-18-35(b)(1)b. In the case of an indirect transaction, the "recipient" is the related member that ultimately receives the interest payment or other intangible expense, not the intermediary related member that passes that payment along. In this case, the trial court properly found that the Luxembourg affiliates ultimately received the 2012 interest payment Pfizer made to its Irish affiliate, and it is undisputed that the 2012 interest payment was not subject to taxation in Luxembourg. Thus, the trial court did not err in declining to apply the subject-to-tax exception.

In its appellate brief, Pfizer argues at length that the direct payment of interest to the Irish affiliate met all the criteria for the subject-to-tax exception. However, Pfizer does not argue that the indirect payment of interest to the Luxembourg affiliates meets those same criteria. Pfizer only requests that this court determine that the evidence before the trial court was insufficient to sustain a finding that Pfizer indirectly paid the 2012 interest payment to the Luxembourg affiliates via the Irish affiliate. Having determined that the trial court had sufficient evidence to make that finding, we find no legal basis for reversing the legal conclusion that the subject-to-tax exception does not apply in these circumstances. Thus, we affirm the judgment insofar as it concluded that Pfizer was not entitled to deduct the interest payment to the Irish affiliate on its 2012 Alabama corporate income-tax return.[1]

The Cross-Appeal

On March 27, 2025, 29 days after the trial court had entered the final judgment in the underlying case, Pfizer filed a motion requesting a hearing on a proposed confidentiality order. After reviewing the motion

[1]Based on our disposition, we do not address any other grounds that the trial court applied in reaching its judgment on this issue.

and the Department's response to the motion, and conducting a hearing, on April 8, 2025, the trial court entered an order adopting Pfizer's proposed confidentiality order. The confidentiality order provided, among other things, that the parties agreed that the exhibits and the transcript of the trial testimony should be sealed from the public record and that the record was sealed in accordance with that agreement.

In its cross-appeal, the Department argues that the trial court erred in granting Pfizer's motion to seal the record. The Department asserts that it did not consent to the entry of the confidentiality order and that, even if it did, the consent of the parties was not a permissible ground for sealing the trial transcript and exhibits from the public record. Pfizer attached to its motion for a hearing on its proposed confidentiality order an e-mail reflecting the consent of the Department's counsel to seal the trial exhibits but expressing that the trial transcript should not be sealed. The trial court acted within its discretion in determining that the Department had consented to allow the trial exhibits to be sealed. The Department failed to assert before the trial court that its consent was insufficient to allow the trial court to enter an order sealing the trial exhibits. Accordingly, that portion of the Department's argument is not preserved for this court's review, and we decline to consider it further.[2] See Andrews v. Merritt Oil Co., 612 So. 2d 409, 410 (Ala. 1992) ("[An appellate] court cannot consider arguments raised for the first time on appeal; rather, our review is restricted to the evidence and arguments considered by the trial court.").

Pfizer acknowledges on appeal that the Department did not consent to sealing the trial transcript. Thus, we consider the Department's argument that the trial court erred in entering its confidentiality order as it relates to the sealing of the trial transcript. The Department argues on appeal, as it did before the trial court, that the trial court's confidentiality order failed to comply with the requirements for the entry of a confidentiality order as outlined in Ex parte Gentry, 228 So. 3d 1016 (Ala. Civ. App. 2017). In Gentry, this court determined, among other things, that "[a]ny order sealing any portion of the record must contain written findings in compliance with Holland [v. Eads, 614 So. 2d 1012,

[2]We note also that Rule 202(B) of the Alabama Rules of Court-Record Privacy and Confidentiality, which became effective on January 1, 2025, provides that financial documents, such as income-tax returns, are considered confidential and are exempt from public access. Rule 202(B) references Ala. Code 1975, § 40-2A-10, which addresses, among other things, confidentiality related to income-tax returns and tax information.

1016 (Ala. 1993),] that clear and convincing evidence supports a conclusion that the relevant 'privacy interest (as set out [in Holland]) rises above the public interest in access [to judicial records].'" 228 So. 3d at 1025.[3] This court cited Holland v. Eads, 614 So. 2d 1012 (Ala. 1993), for its outline of specific criteria that must be satisfied for a trial court to seal a record or any part of a record. Id. at 1024.

The trial court did not make a written finding in compliance with Holland and Gentry that clear and convincing evidence supports its conclusion that Pfizer's privacy interest, as outlined in Holland, rises above the public's right to inspect judicial records in this case. Instead, the confidentiality order relies on the parties' supposed agreement in directing that the trial transcript and exhibits remain confidential. Having concluded that the Department's consent and waiver was limited to the trial exhibits, we find that the trial court's order fails to comply with the requirements, as outlined in Gentry, that it make written

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[3]We note that those requirements, as outlined in Ex parte Gentry, 228 So. 3d 1016 (Ala. Civ. App. 2017), and Holland v. Eads, 614 So. 2d 1012 (Ala. 1993), are memorialized in Rule 301 of the Alabama Rules of Court-Record Privacy and Confidentiality.

findings that clear and convincing evidence supports its order regarding the sealing of the trial transcript.

Based on the foregoing, we affirm that portion of the confidentiality order sealing the trial exhibits. We, however, reverse that portion of the confidentiality order directing that the trial transcript be sealed, and we remand the case with instructions that the trial court vacate that portion of its order.[4]

Conclusion

Regarding Pfizer's appeal, we affirm the judgment. Regarding the Department's cross-appeal, we affirm that portion of the trial court's confidentiality order relating to the sealing of the trial exhibits. We reverse that portion of the order relating to the sealing of the trial transcript and remand the case to the trial court for the entry of an order consistent with this opinion.

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[4]Pfizer also moved this court to seal the exhibits and the trial transcript contained in the record on appeal. We granted the motion to seal the exhibits pending further orders of the court, and we hereby make that order permanent. We denied the motion to seal the trial transcript, which was produced to this court in a redacted form, and we maintain that denial. We also temporarily sealed the transcript of the postjudgment hearing on the proposed confidentiality order; we hereby vacate that order.

CL-2025-0254 -- AFFIRMED.

CL-2025-0278 -- AFFIRMED IN PART; REVERSED IN PART; AND REMANDED WITH INSTRUCTIONS.

Edwards, Hanson, Fridy, and Bowden, JJ., concur.