

Cite as Det. No. 02-0184, 22 WTD 72 (2003)

BEFORE THE APPEALS DIVISION
DEPARTMENT OF REVENUE
STATE OF WASHINGTON

In the Matter of the Petition For Correction of)	<u>D E T E R M I N A T I O N</u>
Assessment of)	
)	No. 02-0184
...)	
)	Registration No. . . .
)	Tax Warrant No. . . .
)	Docket No. . . .

[1] RULE 203; RCW 23B.14.220: CORPORATION -- ADMINISTRATIVE DISSOLUTION -- REINSTATEMENT. A corporation that was administratively dissolved and subsequently reinstated by the secretary of state was a valid corporate entity for all periods after incorporation. The reinstatement related back to the time of dissolution.

[2] RULE 203: CORPORATION -- ADMINISTRATIVE DISSOLUTION -- OFFICERS LIABLE AS PARTNERS. Corporate officers were not liable as partners for corporate debt where a valid corporate entity existed at the time the tax liabilities were incurred.

Headnotes are provided as a convenience for the reader and are not in any way a part of the decision or in any way to be used in construing or interpreting this Determination.

NATURE OF ACTION:

[Corporate officers and] [s]tockholders of a corporation protest Compliance's letter notifying them that it would hold them personally liable for taxes incurred by their corporation on the theory that they conducted business as a partnership. We canceled the notification of assessment based on partnership liability.¹

¹ Identifying details regarding the taxpayer and the assessment have been redacted pursuant to RCW 82.32.410.

ISSUES:

- 1) Was Inc. #2 a valid corporation at the time the taxes in Tax Warrant No. . . . were incurred?
- 2) If yes, are the stockholders/officers of Inc. #2 nevertheless personally liable for taxes incurred by Inc. #2 because they operated as a partnership under the old Inc. #1 registration number?

FACTS:

Okimoto, A.L.J. -- . . . (Taxpayers) are individuals allegedly involved in a partnership consisting of [Founder] and her two sons, . . . , and . . . and their respective marital communities. Together they owned 100 percent of . . . (Inc. #2) during Oct/99, Nov./99, Dec/99, Jan/00, Feb/00, and Mar/00, the period covered by Tax Warrant No.

[Founder] originally incorporated . . . (Inc. #1) on August 27, 1985 and the Washington Secretary of State's office (SOS) gave it corporate account # Inc. #1 subsequently registered with the Department of Revenue (DOR) and received registration number [Founder] was the sole shareholder at that time and [Agent] was listed as the registered agent. Because Inc. #1 failed to renew its corporate license, SOS administratively dissolved the corporation on August 27, 1987. Unaware of the dissolution, Inc. #1 continued business activities and continued to report taxes to DOR under the . . . number.

Sometime during the latter part of 1994 and early 1995, Inc. #1 temporarily quit filing tax returns resulting in a tax warrant being issued and filed. On July 14, 1995, two revenue agents visited Inc. #1's officers and informed them that Inc. #1 was not a valid corporate entity. The revenue agents notified Inc. #1 that an existing tax warrant would be amended to assess Inc. #1 as a general partnership . . . dba: . . . unless Inc. #1 paid all taxes due. Inc. #1 subsequently paid the taxes in full.

[Founder] contacted SOS regarding Inc. #1's corporate status and was told that Inc. #1 had been administratively dissolved. Furthermore, because too much time had elapsed, Inc. #1 could not file for reinstatement. Consequently, on September 20, 1996, [Founder] filed new Articles of Incorporation with SOS for a new entity, . . . (Inc. #2). SOS issued Inc. #2 a Certificate of Incorporation and a new UBI No. SOS also gave Inc. #2 corporate account #: Inc. #2 kept the same name as Inc. #1 and also kept the same federal identification number. On October 20, 1996 when Inc. #2 filed its Sep/96 state excise tax return with the DOR, Inc. #2 used the pre-printed form sent to Inc. #1 and crossed out the old . . . , UBI number and wrote down the newly assigned UBI No. . . . for Inc. #2. Attached to the return was a copy of the Certificate of Incorporation for Inc. #2 and a request to "Please change number." The taxes were paid on an Inc. #2 check. DOR did not change the UBI number, however, and continued to send tax returns to Inc. #2 under the old registration number. Soon thereafter, Inc. #2 abandoned its attempt to have the number corrected and filed subsequent tax returns for Inc. #2 under the old [UBI number].

In September of 1997, Inc. #2 also neglected its paperwork and failed to file its annual list of corporate officers for 1997. Approximately 15 months after the initial articles were filed, SOS administratively dissolved Inc. #2 as of December 22, 1997 for “failure of the corporation to file an annual list of officers/license renewal within the time set forth by law.”

After discovering the dissolution, [Founder] immediately paid the annual fees, filed the annual report and list of officers and applied for reinstatement of the corporation on January 28, 1998. In response to these actions, SOS cancelled the administrative dissolution and issued a certificate of reinstatement to Inc. #2 under [Inc. #2's] UBI No. . . . and [Inc. #2's] Corporate Acct. # . . . on February 2, 1998.

In subsequent years 1998, 1999, and 2000, Inc. #2 timely paid all SOS annual fees and also timely filed its annual report and list of officers sufficient to maintain its corporate status with the SOS. [Founder] signed as President and CEO on the 1998 & 1999 reports, but [son #1] signed as President on the report filed on September 21, 2000.

In March of 2000, [Founder] died and left the business to her heirs. A few months after her death, [son #2] found the sales and B&O tax returns for Inc. #2's last few months in [Founder]'s desk, completely prepared, but unfiled. [Son #2] filed the returns with DOR but did not have the money to pay the tax liability. All tax returns used the old Inc. #1 UBI No.

Based on the filed and unpaid tax returns, Compliance issued the above Tax Warrant No. . . . , against “ . . . (a corporation)” in the amount of \$. . . on June 29, 2000 under [Inc. #1's] registration number.

In the fall of 2000, Compliance discovered that Inc. #2 had no assets and began to explore various theories for assessing personal liability on one or all of the surviving officers. On January 17, 2001 Compliance discovered that the SOS had no paperwork of any kind regarding a corporation with [Inc. #1's] UBI No. Based on this information, Compliance concluded that the corporate entity Inc. #1 never existed, and the entity that actually owned and operated the business was a partnership consisting of the three individuals and their spouses, On January 23, 2001 Compliance sent a letter to the alleged partnership of [Taxpayers] stating:

The Department of Revenue has established that you are personally liable for the taxes, including penalties and interest, of . . . [Inc. #2] The business owes unpaid taxes, interest and penalties in the amount of \$. . . , for the periods 10,11,12 – 1999 & 1-3 – 2000. This amount is assessed in Tax Warrant number . . . and was filed in King County Superior Court on July 25, 2000.

The Department of Revenue will be amending Tax Warrant Number . . . to reflect that the entity is legally a partnership consisting of [Taxpayers], including all marital communities.

The amount of \$. . . is now due and must be paid in full by February 23, 2001. Failure to pay by this date will result in the tax warrant being amended in King County Superior Court and abstracted to include a filing in Snohomish County Superior Court.

(Bracketed material added.)

Based on this theory, Compliance instructed TAA to change the name on [Inc. #1's] account No. . . . to [Taxpayers], and to begin sending tax returns under the alleged partnership name. Compliance has presented no evidence of any written or oral partnership agreement, however. In fact, Taxpayers have at all times maintained that they have acted solely in their capacity as corporate officers of either Inc. #1 or Inc. #2.

[Son #1 and Son #2]² appealed the above demand for payment of the Inc. #2 Tax Warrant No. . . . and the warrant remains due.

DISCUSSION:

One or more persons may act as the incorporator of a corporation by delivering articles of incorporation to the secretary of state. RCW 23.02.010. A corporation's existence begins when the articles of incorporation are filed. RCW 23B.02.030(1). The secretary of state's filing of the articles of incorporation is conclusive proof that the incorporators satisfied all conditions precedent to the incorporation. RCW 23B.02.030(2).

In this case, the undisputed facts clearly show that [Founder] filed articles of incorporation for a new corporation, Inc. #2 on September 20, 1996. The undisputed facts also show that the SOS issued a certificate of incorporation for the new corporation, Inc. #2 on the same day under a new UBI No. We therefore conclude that Inc. #2 was initially a validly incorporated entity as of September 20, 1996, the date when [Founder] filed Inc. #2's Articles of Incorporation and received its certificate of incorporation from SOS.

Next, we must determine whether SOS's administrative dissolution of Inc. #2 on December 22, 1997 invalidated Inc. #2 as a corporate entity, and whether that dissolution caused the taxes included in Tax Warrant No. . . . to attach to [Taxpayers], personally. RCW 23B.14.220 allows a corporation that has been administratively dissolved to apply to SOS for reinstatement within five years after the effective date of dissolution. If SOS reinstates the corporation, the reinstatement relates back to the effective date of the administrative dissolution and the corporation resumes carrying on its business as if the administrative dissolution had never occurred. RCW 23B.14.220(3).

In Inc. #2's case, [Founder] applied with SOS for reinstatement of Inc. #2 on January 28, 1998. This is clearly within five years of the date of dissolution. Furthermore, SOS granted Inc. #2's

² By the time the warrant was issued, the period for filing claims against the Estate of [Founder] had been closed, so the estate did not protest the demand for payment.

reinstatement on February 2, 1998, which was 20 months before Inc. #2 began incurring the delinquent tax liabilities included in Warrant No. . . . Therefore, we conclude that Inc. #2 was a valid corporate entity at the time taxes assessed in Warrant No. . . . were incurred by Inc. #2.

WAC 458-20-203(Rule 203) provides:

Each separately organized corporation is a "person" within the meaning of the law, notwithstanding its affiliation with or relation to any other corporation through stock ownership by a parent corporation by the same group of individuals.

Each corporation shall file a separate return and include therein the tax liability accruing to such corporation. This applies to each corporation in an affiliated group, as the law makes no provision for filing of consolidated returns by affiliated corporations or for the elimination of intercompany transactions from the measure of tax.

It is further well settled that:

A corporation exists as an organization distinct from the personality of the shareholders. *State v. Northwest Magnesite Co.*, 28 Wn.2d 1, 182 p.2d 643 (1947). When the shareholders of a corporation, who are also the corporation's officers and directors, conscientiously keep the affairs of the corporation separate from their personal affairs, and no fraud or manifest injustice is perpetrated upon third persons who deal with the corporation, the corporation's separate entity should be respected. *Frigidaire Sales Corp. v. Union Properties, Inc.*, 88 Wn.2d 400, 562 p.2d 244 (1977).

Grayson v. Nordic Constr. Co., 92 Wn. 2d 552-3, 599 P.2d 1271 (1979).

In this case, Compliance has not contested Taxpayers' assertions that, they, at all times acted in their capacity as corporate officers and not as individuals. Furthermore, virtually, all facts support that conclusion. [Founder] filed articles of incorporation for Inc. #2, filed federal income tax returns in the name of Inc. #2, filed state excise tax returns in the name of Inc. #2, paid for the taxes due on checks in the name of Inc. #2, and to our knowledge conducted all business affairs in the name of Inc. #2. Compliance relies solely on the fact that Inc. #2 reported its excise taxes on tax returns containing the old Inc. #1 registration number (. . .). We find this error insignificant in light of Taxpayers' testimony that they notified DOR of the change in corporations on Inc. #2's Sept/96 tax return. At that time, Taxpayers attempted to correct the registration number error, but their attempts were ignored by the DOR.

Accordingly, we conclude that Taxpayers did not engage in business as a partnership. We further conclude that Taxpayers are not liable as partners for tax liabilities incurred by Inc. #2 during the months of Oct/99, Nov/99, Dec/99, Jan/00, Feb/00 and Mar/00.

DECISION AND DISPOSITION:

Accordingly, we will grant [Taxpayers]' appeal of the above demand for payment of Tax Warrant No.

Dated this 12th day of November 2002.