

GISCO, INC.  
P.O. BOX 1037  
ENTERPRISE, AL 36331-1037,

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STATE OF ALABAMA  
DEPARTMENT OF REVENUE  
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. CORP. 07-263

v.

§

STATE OF ALABAMA  
DEPARTMENT OF REVENUE.

§

### **FINAL ORDER**

The Revenue Department assessed Gisco, Inc. ("Taxpayer") for corporate income tax for the fiscal years ending August 1993 through August 2003. 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 July 12, 2007. Charles McQuaid represented the Taxpayer. Assistant Counsel J.R. Gaines represented the Department.

Gulf Industrial Supply, Inc. ("Gulf Industrial") was incorporated in Alabama in October 1986. Its principle address was Elba, Alabama. Marion Holloway was its registered Alabama agent and one of the incorporators.

The Taxpayer was incorporated in Florida in June 1992. Marion Holloway was the Taxpayer's registered agent and one of its shareholders. The Taxpayer's principle address was listed as being in Panama City, Florida. It also had a business office in Enterprise, Alabama. The Taxpayer took over all aspects of Gulf Industrial's business at that time, which included doing business in both Alabama and Florida. Gulf Industrial was not dissolved, however, and there was no formal transfer of assets from Gulf Industrial to the Taxpayer. The Taxpayer sold its Florida operations in 1996, and thereafter conducted business solely in Alabama.

The Taxpayer and Gulf Industrial were both dissolved in September 2003. The business continued operating as before, with Marion Holloway doing business as a sole proprietorship using the name Gisco.

In November 2004, Marion Holloway reincorporated Gulf Industrial as an Alabama corporation. Holloway was the president. The registered office address was Holloway's personal residence in Elba, Alabama. The principle business location was in Enterprise, Alabama.

The Taxpayer failed to file Alabama income tax returns for the fiscal years in issue. The Department audited the Taxpayer's records, which were being maintained at Gulf Industrial's office in Enterprise. The audit showed that the Taxpayer had Alabama-sourced income in the subject years, and thus had been required to file Alabama returns and pay the tax due in those years. The Department assessed the Taxpayer accordingly.

The Taxpayer's representative argued in the Taxpayer's notice of appeal that "[i]t is well established that corporate debts cannot be avoided by a simple dissolving of a corporation. However, if the debt does not exist at the time the corporation is dissolved and no knowledge of any impending debt was had by any of the corporate officers then no foul has been committed."

The representative also conceded that the Taxpayer should have filed Alabama returns in the subject years. He explained that returns were not filed because the Taxpayer's accountant at the time was on drugs. He further conceded that the Taxpayer was liable for Alabama tax, but as discussed, asserts that the corporation should not be held liable because the Department did not assess tax until three years after the

corporation had dissolved. He testified at the July 12 hearing as follows:

Now, my contention is because Gisco was dissolved before they knew of any tax debt whatsoever – they had no idea they owed anybody any money – and it was a C corporation, it was not a flow-through, then, how can it be held responsible? They didn't know they owed it until three years after they dissolved it.

(T. at 10 – 11)

The representative further testified that if Holloway and the other shareholders had known of the tax debt before dissolution, they would be liable for it.

I'm just saying that when they dissolved – had they known of the debt when they dissolved, they would be liable for it; but they had no – nobody told them about that debt until three years after they dissolved it.

(T. at 12)

To summarize, Marion Holloway incorporated Gulf Industrial in 1986. The corporation operated in Alabama and Florida until 1992, when Holloway incorporated the Taxpayer in Florida. The business thereafter operated in the Taxpayer's name, although Gulf Industrial was not dissolved and there was no formal transfer of assets from Gulf Industrial to the Taxpayer. The Taxpayer's representative conceded that the separate corporations were the same business – “Now, basically, (Gisco) was the same business except Gulf Industrial Supply only sold supplies . . . Gisco, on the other hand, was involved in some minor construction, civilian construction, and sold supplies both in Florida and Alabama.” (T. at 9)

Holloway hired the Taxpayer's representative in this case as his CPA in 2003. The representative advised Holloway to dissolve both Gulf Industrial and Gisco. Both corporations were subsequently dissolved in late 2003. Holloway thereafter continued to

operate the business as a sole proprietorship under the name Gisco. He reincorporated Gulf Industrial in late 2004, and currently operates under that name.<sup>1</sup>

The fact that Holloway and the other minority stockholders in Gisco may not have known that Gisco owed tax when the corporation was dissolved in 2003 does not relieve the corporation (and perhaps Holloway, individually) of liability. In any case, Holloway and the other shareholders should reasonably have known that their company, which was located in Alabama, did business in Alabama, and received Alabama-sourced income, was required to file Alabama income tax returns and pay the tax due in the subject years. A tax debt incurred by a corporation cannot be avoided by dissolving the corporation and thereafter operating under another corporate name, or as a partnership or sole proprietorship. *Ex parte Thorn v. Diesel "Repower," Inc.*, 788 So.2d 140 (Ala. 2000); *Cohen v. Williams*, 318 So.2d 279 (Ala. 1975); and *Moline Properties, Inc. v. CIR*, 63 S.Ct. 1132 (1943).

As indicated, the Taxpayer's representative does not dispute that the corporation should have filed Alabama returns and paid the Alabama tax due in the subject years. He also does not object to the amount of tax assessed by the Department. Rather, his only defense is that the Department cannot pursue the debt because Holloway and the other shareholders did not know of the debt before the corporation was dissolved. But the shareholders should have clearly known that the corporation owed Alabama income tax. Also, the fact that the corporation failed to file Alabama returns contributed to the

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<sup>1</sup> The Department examiner testified that Holloway attempted to reincorporate as Gisco, but that corporate name was already taken. He thus opted to use the name Gulf Industrial Supply.

Department's delay in discovering the corporation's liabilities.

In any case, contrary to the Taxpayer's representative's claim that the tax debt did not exist when the Taxpayer was dissolved, the tax liabilities had already accrued at the time of dissolution, and dissolution could not and did not void the accrued liabilities. The fact that the Department had not yet assessed the Taxpayer for the tax due when the corporation dissolved is irrelevant.<sup>2</sup>

The final assessment is affirmed. Judgment is entered against the Taxpayer for corporate tax, penalty, and interest of \$143,296. Additional interest is also due from the date the final assessment was entered, February 9, 2007.

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

Entered November 20, 2007.

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BILL THOMPSON  
Chief Administrative Law Judge

bt:dr

cc: Glenmore P. Powers, Esq.  
Charles McQuaid  
Melody Moncrief

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<sup>2</sup> The statute of limitations for assessing the Taxpayer also had not expired because the Department can assess tax at any time if a return is not filed, as in this case. Code of Ala. 1975, §40-2A-7(b)(2)a.