

MICHAEL E. GEDGOUDAS, LLC
2 N. 20TH STREET, SUITE 810
BIRMINGHAM, AL 35203,

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STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

Taxpayer,

§

DOCKET NO. BPT. 11-942

v.

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STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER

The Revenue Department assessed Michael E. Gedgoudas, LLC (“Taxpayer”) for 2005, 2006, and 2007 business privilege tax. 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 March 20, 2012. Michael Gedgoudas represented the Taxpayer. Assistant Counsel David Avery represented the Department.

FACTS

The Taxpayer qualified with the Secretary of State’s Office to conduct business in Alabama on February 4, 1998. The Taxpayer’s sole member, Michael E. Gedgoudas, is a practicing attorney in Alabama.

Gedgoudas and another attorney, Robert C. Snead, Jr., formed another LLC, Snead & Gedgoudas, LLC, in 2003. Gedgoudas stopped operating under the Taxpayer’s name at that time and closed his operating and trust bank accounts that were in the Taxpayer’s name. He and his partner thereafter operated under the name Snead & Gedgoudas, LLC.

In January 2008, Gedgoudas stopped practicing in the name of Snead & Gedgoudas, LLC, and again began practicing as a sole practitioner under the name Michael E. Gedgoudas, LLC.

The Taxpayer filed business privilege tax returns with the Department and paid the tax due through 2003. During the years in issue, 2005 through 2007, Snead & Gedgoudas, LLC filed returns and paid the tax due. The Taxpayer has filed returns and paid the tax due since 2008.¹

ANALYSIS

Alabama's business privilege tax is levied at Code of Ala. 1975, §40-14A-22(a), and reads as follows:

Levy of tax. There is hereby levied an annual privilege tax on every corporation, limited liability entity, and disregarded entity doing business in Alabama, or organized, incorporated, qualified, or registered under the laws of Alabama. The tax shall accrue as of January 1 of every taxable year, or in the case of a taxpayer organized, incorporated, qualified, or registered during the year, or doing business in Alabama for the first time, as of the date the taxpayer is organized, incorporated, registered, or qualifies to do business, or begins to do business in Alabama, as the case may be. The taxpayer shall be liable for the tax levied by this article for each year beginning before the taxpayer has been dissolved or otherwise ceased to exist or has withdrawn or forfeited its qualification to do business in Alabama. The amount of the tax due shall be determined by multiplying the taxpayer's net worth in Alabama by the rate determined in subsection (b).

The Department argues that the Taxpayer was subject to the tax during the years in issue because the Taxpayer was not dissolved, and thus continued to exist as an entity during the subject years. The Department cites the Administrative Law Division's decision in *John Wayne Enterprise, Inc. v. State of Alabama*, Docket BPT. 05-631 (Admin. Law Div. 8/5/2005). That case reads in pertinent part as follows:

The Taxpayer failed to file a 2003 business privilege tax return. The Department determined that the Taxpayer had not been dissolved. It

¹ Gedgoudas explained at the March 20 hearing that his accountant inadvertently failed to timely file the Taxpayer's 2008 return and pay the tax. He subsequently filed the return and paid the tax due, plus penalties and interest.

accordingly assessed the Taxpayer for the tax due, plus penalties and interest. The Taxpayer appealed.

The Taxpayer contends that it does not owe the tax in question because it discontinued business in 2002. The Department correctly argues, however, that the business privilege tax is on the privilege of doing business in Alabama, regardless of whether any business is actually conducted.² Code of Ala. 1975, §40-14A-22(a) levies the tax on “every corporation, limited liability entity, and disregarded entity doing business in Alabama, or organized, incorporated, qualified, or registered under the laws of Alabama. . . . The taxpayer shall be liable for the tax levied by this article for each year beginning before the taxpayer has been dissolved or otherwise ceased to exist or has withdrawn or forfeited its qualification to do business in Alabama.” Because the Taxpayer was qualified to do business in Alabama in the subject year, it is liable for the minimum business privilege tax in that year.

John Wayne Enterprises at 1 – 2.

The Taxpayer’s representative and sole member during the years in issue, Michael E. Gedgoudas, argues that the tax is not due because the Taxpayer “ceased to exist” in 2003. Gedgoudas argues that a formal dissolution is not required because §40-14A-22(9) includes the phrase “or otherwise ceased to exist.” He claims that the phrase must have meaning, and that the Taxpayer ceased to exist in 2003 because he began practicing in the name of Snead & Gedgoudas, LLC, in that year.

I am unsure how an LLC may cease to exist other than by dissolution, but the Taxpayer was registered to do business with the Secretary of State during the subject years, and was thus clearly in existence and qualified to do business in Alabama in those

² In that regard, the current business privilege tax is like Alabama’s defunct franchise tax, which was “imposed upon corporate existence, not corporate activity or exerted corporate function.” *State, Dept. of Revenue v. Forrester*, 419 So.2d 231, 233 (Ala. Civ. App. 1982) citing *State v. Bradley*, 93 So. 595, 597 (Ala. 1922).

years. As indicated above, the fact that the Taxpayer conducted no business in Alabama in those years is of no consequence. And the fact that Gedgoudas again began practicing under the Michael E. Gedgoudas, LLC name in 2008, without reforming the LLC or re-filing with the Secretary of State's Office, also confirms that the Taxpayer had continued to exist as an LLC during the years in issue.

The tax and interest as assessed is affirmed. The penalties are waived for reasonable cause under the circumstances. Judgment is entered against the Taxpayer for 2005, 2006, and 2007 business privilege tax and interest of \$137.89, \$131.48, and \$123.77, respectively. Additional interest is also due from the date the final assessments were entered, November 17, 2011.

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

Entered March 30, 2012.

BILL THOMPSON
Chief Administrative Law Judge

bt:dr

cc: David E. Avery, III, Esq.
Michael E. Gedgoudas, Esq.
Cathy McCary