

1 STATE OF ALASKA
DEPARTMENT OF ADMINISTRATION
2 OFFICE OF TAX APPEALS
PO Box 110200
3 Juneau, Alaska 99811-0200
(907) 465-1886; Fax (907) 465-2280 BEFORE THE OFFICE OF TAX APPEALS

4 STATE OF ALASKA

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6
7 **IN THE MATTER OF:**

8 **NORTHWEST MEDICAL IMAGING,**
9 **INC.**

Case No. 31-OTA-99 on remand

10 **Corporate Income Tax**
11 **9112-9512**

12 **DECISION**

13 **I. INTRODUCTION**

14 This case presents an issue of first impression: Did a one-man corporation that was
15 administratively dissolved in 1990 exist as a corporation for tax purposes in 1991-1995 when the
16 sole director and shareholder was unaware of the dissolution and continued to do business and
17 file income tax returns under the corporate name?

18 Northwest Medical Imaging Inc., (NWMI) was incorporated in the State of Washington in 1988
19 to conduct the business of providing medical radiology services to hospitals and healthcare
20 providers in Alaska and Washington. The sole director and shareholder at all times was Dr.
21 James Pister. In February 1990 the State of Washington issued a Certificate of Administrative
22 Dissolution against NWMI for failure to pay license fees and file its annual report. But Dr. Pister
23 did not learn of the dissolution until years later.

24 In 1997, the Alaska Department of Revenue (DOR) issued a deficiency corporate income tax
25 assessment, with penalties, against NWMI for tax years 1991 through 1995. NWMI challenges
26 that assessment on the grounds that the business was not a corporation for tax purposes in 1991-
27 1995.

28 For the reasons discussed below, I conclude that the corporation did not exist for tax purposes in
29 1991-1995.

1 **II. FACTS AND PROCEEDINGS**

2 **A. Proceedings**

3
4 On May 8, 1997 DOR issued a notice and demand for \$88,665 in taxes, plus interest and
5 penalties, that DOR determined were due under the corporate income tax returns that NWMI
6 filed for 1991 through 1995. NWMI requested an informal conference to dispute the assessment.

7 On October 13, 1999 DOR issued an informal conference decision that upheld the assessment of
8 corporate income tax but reduced the amount to \$31,949, plus interest. The additional taxes
9 result from DOR's denial of substantial travel and rent deductions that NWMI claimed on its
10 corporate income tax returns. The ICD also upheld the negligence and failure to pay penalties.

11 In November 1999 NWMI appealed the informal conference decision to the Office of Tax
12 Appeals (OTA). The appeal challenges the additional corporate income taxes assessed for each
13 tax year and the associated penalties.

14 During pre-hearing proceedings in 2000 the parties completed substantial discovery concerning
15 the disputed corporate tax deductions and conducted unsuccessful settlement negotiations on the
16 tax and penalty issues. In summer of 2000 NWMI's attorney withdrew for health reasons.

17 In November 2000 the taxpayer's new attorney filed a motion to prohibit the corporate income
18 tax assessments for 1991 through 1995 on the grounds that NWMI was not a corporation during
19 the tax years at issue. This was the first time that NWMI raised the issue of its corporate status in
20 contesting the tax assessments.

21 On March 2, 2001 OTA entered summary judgment for the taxpayer on the grounds that in 1991-
22 1995 NWMI was not a corporation for tax purposes under the six-part test of federal Treasury
23 Regulation 301.7701-2(a) (1) ("Treas. Reg. 301").

24 On June 3, 2002, the Superior Court reversed the summary judgment on the grounds that there
25 were material questions of fact concerning the corporate dissolution and the status of the
26 business for tax purposes under Treas. Reg. 301. The court remanded the case to OTA with
27 instructions to reconsider the question of whether NWMI was a corporation subject to corporate
28 income taxation during 1991-1995.¹

29 In the proceedings following remand, the parties conducted limited additional discovery and
filed a stipulation of material facts. An evidentiary hearing was held in Juneau on December 13,

¹ The fact questions identified by the superior court included: (1) When did the formal dissolution actually occur ?
(2) Under the six-part test of Treas. Reg. 301.7701-2(a): (a) Did Dr. Pister actually believe that the corporation was
valid, so that he was not personally liable for NWMI's post-dissolution debts ? (b) Did NWMI have "continuity of
life" after its dissolution? (c) Was there transferability of assets after dissolution?

1 2002, to address disputed fact issues. Dr. Pister testified in person. Jim Hastie, a former DOR
2 investigator, testified by telephone. Tom Swanson, C.P.A. testified by deposition.

3 In the OTA proceedings following remand, Michael Barnhill, Assistant Attorney General
4 represented DOR. Robert Reges, Reges & Boone, LLC, represented NWMI.

5 **B. Facts**

6 The parties stipulated to the facts in paragraphs 1 through 11 below. The findings in paragraphs
7 12 through 25 are based on the testimony and documents admitted at the hearing.

- 8 1. Northwest Medical Imaging, Inc., the *de jure* corporation, was incorporated under the laws of
9 the State of Washington on November 10, 1988.
- 10 2. The sole director and shareholder of Northwest Medical Imaging, Inc. was, at all times,
11 James D. Pister.
- 12 3. A certificate of administrative dissolution (CAD) was issued by the Washington Secretary of
13 State, which had an effective date of February 21, 1990. Exhibit 1, a three-page document, is
14 a true and correct, certified copy of the CAD.
- 15 4. James D. Pister did not become aware of this dissolution until December 1998.
- 16 5. During the period 1990 to 1998, while Dr. Pister was unaware of the dissolution:
 - 17 (a) a business for profit was conducted under the name Northwest Medical Imaging and
18 Northwest Medical Imaging, Inc.;
 - 19 (b) business transactions were conducted under the name Northwest Medical Imaging,
20 Inc., including maintenance and use of bank accounts; contracting with physicians;
21 contracting with service providers such as accountants, financial consultants and
22 lawyers; contracting with medical organizations; and leasing vehicles.
 - 23 (c) Tom Swanson of Cottle & Swanson, CPA's, prepared Alaska income tax returns
24 (Form 04-6110 and federal income tax returns (Form 1120) under the name
25 Northwest Medical Imaging, Inc.
 - 26 (d) Dr. Pister sought at least one contract under the name "Radiologic Imaging
27 Specialties."
- 28 6. Cottle & Swanson, CPA's learned that Northwest Medical Imaging, Inc. had been
29 administratively dissolved sometime in 1999.

- 1 7. In 1998, several contracts then in effect had been signed by Dr. Pister using the name
2 Northwest Medical Imaging, Inc. All of those contracts had been entered into after February
3 21, 1990.
- 4 8. In 1999, upon advice of legal counsel, Ken Reiserer, Dr. Pister instructed Cottle & Swanson
5 to "wind up" tax filings under the name Northwest Medical Imaging, Inc. as the contracts
6 expired.
- 7 9. Federal income tax returns (Form 1120) were filed in 1998-2000 under the name Northwest
8 Medical Imaging, Inc. showing gross receipts from the contracts.
- 9 10. By 2000, all of the contracts had expired except one. Dr. Pister sold that contract and stopped
10 doing any business under the name Northwest Medical Imaging, Inc.
- 11 11. The federal income tax return (Form 1120) for 2000 was the last tax return filed under the
12 name Northwest Medical Imaging, Inc.
- 13 12. The business of NWMI was to provide medical radiology services to hospitals and health
14 care providers in Alaska and Washington. Dr. Pister provided the radiology services himself
15 and occasionally contracted with other doctors to provide the services when he was
16 unavailable.
- 17 13. On February 21, 1990 when the CAD was issued the corporation had no long-term contracts
18 because Dr. Pister was providing medical radiology services on a per-job basis. In 1993 Dr.
19 Pister did execute some long term contracts in the corporate name to provide radiology
20 services.
- 21 14. As of February 21, 1990 when the CAD was issued the corporation owned one Xerox copier,
22 one computer, 2-3 hand-held tape recorders, and a few medical books. These tangible assets
23 had a total value of \$3,600 and were all located in the NWMI office in Dr. Pister's home in
24 Federal Way, Washington.
- 25 15. While NWMI was a de jure corporation and continuing after the CAD in February 1990, Dr.
26 Pister exercised control over the tangible assets and those assets remained at his home office.
27 Dr. Pister and family members had access to the computer for personal use at all relevant
28 times.
- 29 16. As of December 31, 1989, the corporation had one known debt. As reflected on the
corporation's 1989 tax return the corporation owed \$6,890 on accounts payable at the end of
1989. This debt most likely reflected bills that NWMI received at the end of December 1989
which were then paid during January 1990 after sufficient deposits were made to NWMI's
account to pay them in full.

- 1 17. On February 21, 1990 when the CAD issued, NWMI did not have any debts, other than
2 monthly bills. NWMI operated on a cash basis. NWMI timely paid its monthly bills, usually
3 within 40 days.
- 4 18. At all relevant times Dr. Pister relied on accountants to do the corporate ledgers, financial
5 statements and tax returns. He relied on an attorney to do the incorporation. During the *de*
6 *jure* period, 1988- 1990, the corporation hired contractors to do the accounting and legal
7 work. The corporation had no employees except Dr. Pister.
- 8 19. Dr. Pister did not intend to dissolve NWMI in 1990 or to liquidate its assets because Dr.
9 Pister mistakenly assumed that the incorporation continued to be valid.
- 10 20. In 1992, NWMI had total revenues of \$276, 762 and total operating expenses of \$305,703. In
11 1993 NWMI had total revenues of \$433, 760 and total operating expenses of \$397,577. In
12 1994 NWMI had total revenues of \$464,924 and total operating expenses of \$470,242. In
13 1995 NWMI had total revenues of \$476,084 and total operating expenses of \$481,260.
- 14 21. DOR had actual notice of the dissolution when Jim Hastie, an investigator for the Permanent
15 Fund Division of DOR, learned in 1995 that the state of Washington had issued a CAD in
16 1992.

15 III. DISCUSSION

16 A. Summary of Argument

17
18 DOR concedes that NWMI was not a *de jure* corporation in 1991-1995 but contends that Alaska
19 and federal law does not require that a business entity exist as a legal corporation for the business
20 to be subject to state and federal corporate income tax. The test for determining whether a
21 business entity is subject to corporate income taxation is Treasury Regulation 1.6012-2 (“Treas.
22 Reg. 1.6”).² This federal tax regulation provides:

23 A corporation in existence during any portion of a taxable year

24 ² In the original OTA proceedings, DOR contended that a different federal tax regulation, Treas. Reg. § 301.7701-
25 2(a)(1), was applicable in determining whether NWMI was a corporation for tax purposes. Section 301 sets out six-
26 part test for classifying business entities as either associations/corporations or partnerships for income tax purposes.
27 Under that regulation the six characteristics of a corporation are (1) associates; (2) an objective to carry on business
28 for profit; (3) centralization of management; (4) limited liability; (5) free transferability of interest; and (6)
29 continuity of life.

OTA’s initial decision granting summary judgment to NWMI applied the Section 301 criteria in holding that
NWMI was not taxable as a corporation. The superior court’s decision remanding the case to OTA also focused on
Section 301. But after remand of the case to OTA, the attorneys for DOR and NWMI agreed that Section 301 is
inapposite and that Treas. Reg 1.6012-2 applies in determining whether the corporation continued to exist as a
corporation for tax purposes in 1991-1995. But NWMI contends that if Treas. Reg. 301 were applicable it would
lead to the conclusion that the post-dissolution business conducted by Dr. Pister was not a corporation because the
quintessential characteristic of a corporation, limited liability, did not exist.

1 is required to make a return.... A corporation is not in existence
2 after it ceases business and dissolves, retaining no assets,
3 whether or not under State law it may thereafter be treated
4 as continuing as a corporation for certain limited purposes
5 connected with winding up its affairs, such as for the purpose
6 of suing and being sued.

7 Treas. Reg. § 1.6012-2(a)(2).

8 According to DOR, Treas. Reg. 1.6 requires a corporation to do three things in order to terminate
9 any further income tax liability: (1) cease business, (2) dissolve, and (3) retain no assets. DOR
10 concedes that the corporation was dissolved in February 1990 but contends that NWMI
11 continued to exist for income tax purposes despite the administrative dissolution because NWMI
12 in fact continued to do business and retained assets in 1991-1995.

13 NWMI agrees that Treas.Reg. 1.6 is applicable in determining whether NWMI existed as a
14 corporation and was required to file corporate tax returns for 1991-1995. But NWMI contends
15 that one must look to Washington law in determining whether the corporation ceased doing
16 business and retained assets after the administrative dissolution. NWMI contends that under
17 Washington law the corporation was dissolved and was prohibited from doing business as a
18 corporation after the state issued the certificate of administrative dissolution; the implied in law
19 “wind-up” period expired by March 1990 when all of NWMI’s debts were paid; and the
20 corporate assets passed as a matter of state law to Dr. Pister as the sole shareholder. Thus,
21 NWMI maintains that applying Treas. Reg. 1.6, in conjunction with Washington law, leads to the
22 conclusion that the corporation did not exist in tax years 1991 through 1995.

23 **B. Under Washington law, the corporation, NWMI, Inc., was effectively dissolved**
24 **on February 21, 1990.**

25 The Certificate of Administrative Dissolution (“CAD”), dated February 21, 1990, states that
26 NWMI, Inc. was dissolved under Revised Code of Washington (RCW) § 23A.28.125.³ That
27 statute provided, in pertinent part:

28 Upon the filing of the certificate of administrative dissolution,
29 the existence of the corporation shall cease, except as otherwise
provided in this chapter.

RCW 23A.28.125 (3).

Washington courts have read this statute to mean that when a corporation is dissolved
administratively, it immediately ceases to exist. Zimmerman v. KYTE, 765 P.2d 905 (Wash. App.
1988). In Zimmerman two shareholders and a corporation brought a tort suit. The court allowed

³ RCW 23A was effective until July 1, 1990 when it was replaced by RCW 23B. 1989 Wash. Laws, Ch. 165. All
cites hereafter to the Washington code refer to Chapter 23A which was in effect in February 1990 when the CAD
dissolving NWMI, Inc. was issued.

1 the shareholders to proceed as sole plaintiffs after the corporation was dissolved on the grounds
2 that when the corporation was administratively dissolved it immediately ceased to exist, and all
3 of its assets flowed automatically to the shareholders, subject to the claims of corporate creditors.
4 *Id.* at 909.

5 Under RCW 23 A, dissolution ends the power of a corporation to enter into contracts unrelated
6 to winding up and liquidation. White v. Dvorak, 896 P. 2d 85, 88 (Wash. App. 1995). In this case
7 after the CAD issued in February 1990 Dr. Pister entered new contracts under the corporate
8 name to provide radiology services and leased vehicles using the corporate name. But under
9 Washington law those new post-dissolution contracts and leases were rendered Dr. Pister's
10 personal responsibility regardless of the fact that he purported to act for the corporation when he
11 executed them.⁴

12 Under RCW 23A when a CAD was issued, the corporation immediately ceased to exist "except
13 as otherwise provided in this chapter." That statutory exception is a two-year time period during
14 which shareholders can reinstate the dissolved corporation and the corporation can sue or be sued
15 for any claim existing before dissolution. *See*, RCW 23A.28.127; RCW 23A.28.250.

16 Here, Dr. Pister, the sole shareholder, did not apply for reinstatement. Failure to comply with the
17 reinstatement provisions resulted in irrevocable dissolution rendering the corporation incapable
18 of suing or being sued. Pacesetter Real Estate, Inc. v. Fasules, 767 P. 2d 961 (Wash. App. 1989)
19 (held that a dissolved corporation lacked standing to bring legal action because a "corporation's
20 failure to apply for reinstatement within the time permitted results in irrevocable dissolution." *Id.*
21 at 964-965.)

22 Under the applicable Washington survival statute, claims could be asserted against NWMI, Inc.
23 after dissolution only if the claims arose prior to the dissolution and were asserted during the
24 reinstatement period.⁵ DOR's claim for additional corporate income taxes for 1991 did not arise
25 until March 1992, the deadline for filing the 1991 tax return.⁶ Thus, DOR's earliest tax claim
26 against the corporation arose more than two years after the dissolution pursuant to the CAD.
27 DOR first asserted its tax claims in the assessment dated May 8, 1997, more than seven years
28 after the CAD issued.

29 Relying on University of Alaska v. Thomas Architectural Products, Inc., 907 P. 2d 448, 450
(Alaska 1995), DOR argues that NWMI, Inc. had an obligation to take affirmative action to
wind-up its affairs after the CAD issued in February 1990 and because it did not do so the

⁴ RCW 23A.44.100 said: "All persons who assume to act as a corporation without authority so to do shall be
severally liable for all debts and liabilities incurred or arising as a result thereof."

⁵ RCW: 23A.28.250 provided: "The dissolution of a corporation ... shall not take away or impair any remedy
available to or against such corporation... for any right or claim existing, or any liability incurred, prior to such
dissolution if action or proceeding thereon is commenced within two years after the date of such dissolution."
Quoted in Pacesetter Real Estate, Inc., v. Fasules, 767 P. 2d 961 (Wash. App. 1989) at 964.

⁶ United States v. Ripley, 926 F. 2d 440, 443-444 (5th Cir. 1991) (IRS claim for nonpayment of taxes arose when
taxes "became payable", which was when the tax return was required to be filed.)

1 corporation continued to exist during the 1991-1995 tax years at issue. This argument is not
2 persuasive.

3 In Thomas Architectural Products the University of Alaska sued a dissolved Washington
4 corporation for damages stemming from defective building panels that the corporation had
5 supplied as a sub-contractor prior to its involuntary dissolution. The issue was whether the
6 University's suit was barred because it was not filed within the two-year post-dissolution period
7 under RCW 23A.28.250. The Alaska Supreme Court held that that under Washington law the
8 express wind-up requirements for the protection of creditors that apply to corporations that
9 voluntarily dissolve also apply by implication to administratively dissolved corporations. The
Court concluded that the University's claims would not be barred if the University was a known
creditor who did not receive notice of the dissolution before expiration of the two-year period for
filing suit against dissolved corporations.

10 Thomas Architectural Products does not help DOR here because it is clear that DOR was not a
11 creditor at the time of dissolution. None of the tax claims for tax years 1991-1995 that DOR is
12 asserting against the corporation arose before the CAD issued on February 21, 1990. The
13 Supreme Court's decision in Thomas Architectural Products addressed survival of pre-
14 dissolution claims by a creditor that did not receive timely notice of the dissolution. The wind-up
15 requirements that the Court implied from the Washington statutes required a dissolving
corporation to satisfy itself that all debts, obligations, and liabilities of the corporation have been
paid.

16 In the instant case, NWMI, the corporation, had only one debt at the end of 1989; it owed \$6,890
17 on accounts payable. That debt, and other monthly bills, were paid in the first three months of
18 1990. So, the corporation complied with wind-up requirements shortly after the CAD issued.
19 Thomas Architectural Products cannot be reasonably stretched, as DOR would have it, to mean
20 that the NWMI corporation continued to exist for six years after the CAD because the sole
shareholder, who was unaware of the dissolution, failed to notify non-existent creditors or take
affirmative action to transfer the limited tangible assets to himself.

21 **C. Under Federal tax law, the corporation ceased to exist when it was dissolved**
22 **under state law.**

23 Relying on McDonald & Eide, 865 F.2d 73 (3rd Cir. 1989), DOR argues that Washington law is
24 not controlling because the test of corporate existence for purposes of income taxation is a matter
25 of federal law. But McDonald & Eide actually lends support to NWMI's position because it
26 recognizes that in applying Treas. Reg. 1.6 the federal courts consider the statutory and common
27 law of the corporate domicile in determining whether a corporate taxpayer has dissolved and still
holds valuable assets. 865 F.2d at 76.

28 Cold Metal Process Company v. Commissioner of Internal Revenue, 247 F.2d 864 (6th Cir.
29 1957) illustrates how federal courts have used state law in applying Treas. Reg. 1.6 to determine
if a corporation exists for tax purposes. In Cold Metal the Sixth Circuit Court of Appeals

1 reversed a Tax Court decision upholding an income tax deficiency assessment against a
2 dissolved corporation.

3 Cold Metal, an Ohio corporation, had voluntarily dissolved in accordance with Ohio law on
4 December 29, 1945. At the time of dissolution the corporation assigned all assets to a trustee,
5 who was the sole remaining shareholder. The principal corporate assets were two patents for a
6 method of processing metals that had become widely used in the industry. Two years before
7 dissolution the United States had initiated litigation to cancel the patents on the grounds of fraud
8 or mutual mistake in granting them. All royalty payments under the patents were impounded by
9 court order until the litigation finally ended in 1949 with a determination that the patents were
10 valid. At the conclusion of the patent litigation the trustee received \$15.44 million. The IRS then
11 issued a corporate income tax assessment of \$5.55 million against the Cold Metal corporation on
12 the grounds that most of the money received by the trustee in 1949 was taxable as ordinary
13 income to the corporation.

14 After determining that the assignment of the challenged patents to the trustee in 1945 was not an
15 anticipatory assignment of income, the Sixth Circuit held that the assessment for tax year 1949
16 was invalid. In concluding that the Cold Metal corporation did not exist for tax purposes in 1949,
17 the Court applied a former, and near identical, version of Treas. Reg. 1.6, and looked to state law
18 regarding dissolution. The Court noted that the applicable Ohio statute clearly provided that the
19 corporation was dissolved in 1945 and prohibited from conducting business, except as needed to
20 pay creditors and wind up its affairs, and that it could sue in the corporate name for those
21 purposes. So, the Court looked to state law in rejecting the IRS contention that the corporation
22 continued to exist for tax purposes because it remained a party in numerous lawsuits after
23 dissolution. 247 F. 2d at 874.

24 Cold Metal relied on a Ninth Circuit case that involved similar circumstances. In Commissioner
25 of Internal Revenue v. Henry Hess Co., 210 F. 2d 553 (9th Cir.1954), the Ninth Circuit applied
26 the same tax regulation concerning corporate existence and concluded that a shipping company
27 that had fully dissolved in November 1942 under state law did not continue to exist for federal
28 income tax purposes in 1943-1944 when the United States settled a large corporate claim for the
29 value of a steamer requisitioned during the war. The claim for the undetermined value of the
steamer, along with other corporate assets, had been transferred to a shareholder at the time of
dissolution.

30 McDonald & Eide, Henry Hess, and Cold Metal involved situations where corporations were
31 voluntarily dissolved and after dissolution a trustee or shareholder received large sums of money
32 or other property that would have been taxable income to the corporation if the corporation were
33 still in existence. In each case the courts ruled that a corporation that had been fully dissolved
34 under state law was not taxable.

35 These federal tax cases offer no support for DOR's argument that NWMI, the corporation,
36 continued to exist for tax purposes years after it was dissolved simply because the sole
37 shareholder, who was unaware of the involuntary dissolution, continued to use the corporate

1 name. Instead, the instant case presents a stronger argument against taxability because it involves
2 the involuntary dissolution of a small corporation that had no large assets, or debts, at the time of
3 dissolution.

4 Like the courts in the federal income tax cases above, OTA rejects the proposition that an
5 income tax can be assessed against a non-existing corporation. As the Court explained in Cold
6 Metal :

7 ...we have difficulty in reconciling our fundamental concept of
8 Federal income taxation with the proposition that an income tax can
9 be assessed against a non-existing corporation. The making of an
10 assessment would seem to require the existence in the taxable
11 year of the taxpayer against whom the assessment is to run. Income
12 tax liability is statutory. We find no Federal statute which requires
13 a non-existing taxpayer to file an income tax return or which imposes
14 an income tax liability for a certain year upon a so-called taxpayer
15 who was not in existence during that taxable year.

16 Cold Metal, *supra*, 247 F. 2d at 874.

17 IV. CONCLUSION

18 Based on all of the facts and law discussed above, I conclude that NWMI, the corporation, was
19 fully dissolved and no longer existed as a corporation for tax purposes after 1990. The corporate
20 taxes and penalties assessed for tax years 1991-1995 must be abated.

21 This is the final administrative decision under AS 43.05.465(e). A party may seek judicial
22 review of this decision filing a notice of appeal in accordance with the Alaska Rules of Appellate
23 Procedure within 30 days of the date of service of this decision.

24 Dated: Aug 6, 2003

25 
26 _____
27 Administrative Law Judge