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BEFORE THE STATE BOARD OF TAX APPEALS
STATE OF ARIZONA
100 North 15th Avenue - Suite 140
Phoenix, Arizona 85007
602.364.1102

MICHAEL and DEBRA BROWNFELD,)
Appellants,) Docket No. 1858-01-S
vs.)
ARIZONA DEPARTMENT OF REVENUE,) NOTICE OF DECISION:
Appellee.) FINDINGS OF FACT AND
) CONCLUSIONS OF LAW
) CORRECTED

10 The State Board of Tax Appeals, having considered all evidence and arguments presented, and
11 having taken the matter under advisement, finds and concludes as follows:

12 FINDINGS OF FACT

13 Michael and Debra Brownfield ("Appellants," with the singular referring to Michael Brownfield)
14 were officers of Tammaron Development, Inc. ("TDI"). The Arizona Department of Revenue (the
15 "Department") audited TDI for the period March 1992 through January 1998 ("Audit Period") and
16 assessed it additional transaction privilege tax under the prime contracting classification. A.R.S. § 42-
17 5075. The assessment includes penalties for failure to timely file transaction privilege tax returns and pay
18 the tax due plus interest. Appellant protested the assessment claiming that the Department used
19 incorrect income figures and arguing that most of the income at issue was attributable to exempt
20 subcontracting activities. An informal conference was held in 1998 and the Department subsequently
21 amended the assessment reducing the tax.

22 In 1999, Appellant advised the Department that TDI was defunct and had no assets. Thereafter,
23 the Department amended the assessment against TDI to cover the Audit Period March 1992 through
24 December 1995 and issued an assessment against Appellant, personally, for the period January 1996
25 through December 1998.

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2 Appellant protested the individual assessment to the Office of Administrative Hearings ("OAH").
3 At the hearing before OAH, Appellant requested and was granted an extension of time to obtain
4 additional information. After reviewing the additional information, the Department amended the
5 assessment reducing the tax against Appellant. Appellant again requested additional time to provide
6 more information. The OAH granted a final extension. The Department reviewed the documents, found
7 that they did not support any further amendment and issued a decision upholding the Department's
8 amended assessment.

9 Appellants not timely appeal the individual assessment to this Board.¹ Appellants do not appeal
10 the assessment against TDI.

11 DISCUSSION

12 The issue before the Board is whether Appellants are liable for the tax assessed. The
13 presumption is that an assessment of additional . . . tax is correct. See *Arizona State Tax Commission v.*
14 *Kieckhefer*, 67 Ariz. 102, 191 P.2d 729 (1948).

15 Appellants argue that a corporation, Michael Brownfield, Inc. ("MBI"), which has since been
16 dissolved and has no assets, is actually the taxpayer liable for the assessment at issue. The Department
17 argues that Appellants are liable either as alter egos of the corporation.

18 The courts have held that if a corporation is, in fact, the alter ego of one or a few individuals or if
19 the observance of the corporate form would sanction a fraud or promote injustice, the corporate fiction will
20 be set aside. See *Employer's Liability Assur. Corp. v. Lunt*, 82 Ariz. 320, 323, 313 P.2d 393, 395 (1957);
21 see, also *Cammon Consultants Corp. v. Day*, 181 Ariz. 231, 233, 889 P.2d 24, 26 (App. 1994).

22 In *Lunt*, the court found members of the Barr family were the alter egos of a corporation of which
23 they were the principal officers, directors and stockholders. The family controlled the corporation's assets
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¹ Although the Department originally issued the individual assessment in Michael Brownfield's name only, the assessment has since been amended to include Debra Brownfield.

1 and operations. Further, the corporation engaged in the same business the Barrs engaged in prior to
2 incorporation and used the same office location, equipment and telephone number.

3 In this case, Appellants have formed a number of corporations through which they have engaged
4 in contracting activities. In 1981, Appellant obtained a contracting license for Custom Country Builders.
5 This corporation dissolved in 1987 after Appellant filed bankruptcy. In 1988, Appellant incorporated TDI.
6 Before TDI was dissolved in 1996, Appellants incorporated MBI in March of 1995. The Corporation
7 Commission revoked MBI's corporate charter in 1997 after MBI failed to file the required annual reports.
8 MBI did not obtain a contracting license from the Registrar of Contractors, nor did it obtain a transaction
9 privilege tax license or file transaction privilege tax returns with the Department.²

10 Appellants were the principal officers, directors and stockholders of the corporate entities before,
11 during and after the Audit Period. They controlled the assets and operations of the businesses. The
12 addresses of the corporations were, at all relevant times, Appellants' home address, and Appellants
13 apparently used the same contracting license from corporation to corporation and throughout the Audit
14 Period.

15 Evidence presented to the Board demonstrates that Appellants controlled the assets and
16 operations of the corporations. They disregarded the corporate form by commingling and transferring
17 assets between themselves and the various corporations. Contracting projects were completed over
18 periods of time involving multiple entities, yet Appellants made no real distinction or allocated costs or
19 income between the various entities in their contracts, books or other records. Business journals, bank
20 statements and complaints filed with the Registrar of Contractors all indicate that Appellants used
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25 ² Subsequently, Appellants formed another Mike Brownfield, Inc. in 2000. Appellants, again, are the officers and
directors of this corporation, which obtained a transaction privilege tax license in 2001 and does business as Casbah
Custom Homes.

1 corporate names interchangeably, even during periods when one or another of the corporations did not
2 exist.³

3 After reviewing the evidence, the Board concludes that Appellants were, essentially, the alter
4 egos of the corporations they formed, including MBI. Therefore, Appellants are liable for the tax
5 assessed.

6 Because Appellants have not shown that their failure to timely file transaction privilege tax returns
7 and pay the tax due was attributable to reasonable cause, the penalties imposed may not be abated.
8 A.R.S. § 42-1125(A) and (D). Finally, the interest at issue is made a part of the tax by statute and
9 represents a reasonable interest rate on the tax due; therefore, it may not be abated. A.R.S. § 42-1123;
10 *Biles v. Robey*, 43 Ariz. 276, 286, 30 P.2d 841 (1934).

11 CONCLUSIONS OF LAW

12 1. Appellants are liable for the tax assessed. A.R.S. § 42-5075; *Employer's Liability Assur.*
13 *Corp. v. Lunt*, 82 Ariz. 320, 323, 313 P.2d 393, 395 (1957);

14 2. Appellants have not shown that their failure to timely file transaction privilege tax returns and
15 pay the tax due was attributable to reasonable cause; therefore, the penalties imposed may not be
16 abated. A.R.S. § 42-1125(A) and (D).

17 3. Because the interest at issue is made a part of the tax by statute and represents a reasonable
18 interest rate on the tax due, it may not be abated. A.R.S. § 42-1123; *Biles v. Robey*, 43 Ariz. 276, 286, 30
19 P.2d 841 (1934).

20 ORDER

21 THEREFORE, IT IS HEREBY ORDERED that the appeal is denied, and the final order of the
22 Department is affirmed.

23 ...

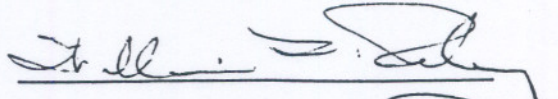
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³ By the end of the Audit Period, Appellants were apparently operating as individuals without any existing corporations.

This decision becomes final upon the expiration of thirty (30) days from receipt by the taxpayer,
unless either the State or taxpayer brings an action in superior court as provided in A.R.S. § 42-1254.

DATED this 21 day of JAN, 2003.

STATE BOARD OF TAX APPEALS



William L. Raby, Chairperson

JCW:alw

CERTIFIED

Copies of the foregoing
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