

STATE OF MICHIGAN
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL

Eldon Gilbert and Diana Gilbert,
Petitioners,

v

MTT Docket No. 328819

Michigan Department of Treasury,
Respondent.

Tribunal Judge Presiding
Cynthia J Knoll

FINAL OPINION AND JUDGMENT

The Tribunal, having given due consideration to the file in the above-captioned case finds:

1. Administrative Law Judge Thomas A. Halick conducted a hearing in this case on September 22, 2009, and issued a Proposed Opinion and Judgment on February 8, 2010. The Proposed Opinion and Judgment provided, in pertinent part, “[t]he parties have 20 days from date of entry of this Proposed Opinion and Judgment to file any written exceptions to the Proposed Opinion and Judgment. The exceptions must be stated and are **limited to the evidence submitted prior to or at the hearing** and any matter addressed in the Proposed Opinion and Judgment.” (emphasis added)
2. Petitioners filed exceptions on February 27, 2010. In their exceptions, Petitioners stated:

”. . . Judge Halick failed to give any consideration to our legal argument that the entire assets and business name and goodwill was [sic] transferred to Osmon LLC and in fact when that happened and we did not sign any agreement about the existing debts, all debts of the business were assumed by the new owner. That should include this tax debt.”

Petitioners also allege that the Tribunal showed favoritism to Respondent and did not follow Tribunal rules in some cases. Petitioners state in part:

“We were not able to be at the pre-hearing conference . . . so we sent in a motion to reschedule; that motion was denied and a telephone conference was scheduled in its place. . . . Instead of calling the Florida phone [number] that we provided, Judge Halick called our Michigan [number] and left a message that the conference was going on without us.”

Petitioners assert that they contacted the Tribunal and by the time “. . . we got the judge on the phone the conference had been going on for 17 minutes without us. I asked what had been going on. The judge said ‘not much just trying to figure things out.’” Petitioners contend this was an example of a “good ol boy” relationship.

Petitioners further assert that they were in compliance with Tribunal rules whereas Respondent was not. “We filed all our papers in a timely manner as agreed”; yet Respondent had not filed its exhibit list or a list of marked exhibits, as of the date for hearing. Petitioners allege that they were present for their hearing whereas Respondent was late and unprepared.

Petitioners continue in their letter of exceptions and arguments that an agreement was made with regard to assessment M199811 and that Respondent had not made the promised corrections.

3. Respondent has not filed a response and has not filed exceptions to the Proposed Opinion and Judgment.
4. Petitioners believe the sale of the business assets constituted an assignment or discharge of obligation of a tax debt. The Tribunal disagrees. Judge Halick properly concluded in the Proposed Opinion and Judgment, “[t]he sale of the assets of the corporation does not absolve Eldon Gilbert from his liability.” The traditional rule of successor liability requires that “where the purchase is accomplished by an exchange of cash for assets [as opposed to shares of stock], the successor is not liable for its predecessor’s liabilities unless one of five narrow exceptions applies.” *Foster v Cone-Blanchard Machine Company*, 460 Mich 696, 597 NW2d 506 (1999). Petitioners provided no testimony or evidence to prove any of the exceptions were met.
5. While it is regrettable that Petitioners felt their experience was biased and unprofessional, that does not indicate that a different conclusion is warranted. Furthermore, Petitioners’ claim is not supported by the record. The Administrative Law Judge properly considered the testimony and evidence submitted in the rendering of the Proposed Opinion and Judgment. More specifically, the Tribunal has reviewed the exceptions and determined that the issues raised by the exceptions were considered in the rendering of the Proposed Opinion and Judgment and lack any merit.
6. Petitioners have failed to show good cause to justify the modifying of the Proposed Opinion and Judgment or the granting of a rehearing and, as such, the Tribunal adopts the Proposed Opinion and Judgment as the Tribunal’s final decision in this case. See MCL 205.726. The Tribunal also incorporates by reference the Findings of Fact and Conclusions of Law in the Proposed Opinion and Judgment in this Final Opinion and Judgment.

IT IS SO ORDERED.

IT IS FURTHER ORDERED that the officer charged with collecting or refunding the affected taxes shall collect taxes and any applicable interest or issue a refund as required by the Final Opinion and Judgment within 28 days of the entry of the Final Opinion and Judgment. If a

refund is warranted, it shall include a proportionate share of any property tax administration fees paid and of penalty and interest paid on delinquent taxes. The refund shall also separately indicate the amount of the taxes, fees, penalties, and interest being refunded. A sum determined by the Tribunal to have been unlawfully paid shall bear interest from the date of payment to the date of judgment and the judgment shall bear interest to the date of its payment. A sum determined by the Tribunal to have been underpaid shall not bear interest for any time period prior to 28 days after the issuance of this Final Opinion and Judgment. Pursuant to MCL 205.737, interest shall accrue (i) after December 31, 1995, at a rate of 6.55% for calendar year 1996, (ii) after December 31, 1996, at a rate of 6.11% for calendar year 1997, (iii) after December 31, 1997, at a rate of 6.04% for calendar year 1998, (iv) after December 31, 1998, at the rate of 6.01% for calendar year 1999, (v) after December 31, 1999, at the rate of 5.49% for calendar year 2000, (vi) after December 31, 2000, at the rate of 6.56% for calendar year 2001, (vii) after December 31, 2001, at the rate of 5.56% for calendar year 2002, (viii) after December 31, 2002 at the rate of 2.78% for calendar year 2003, (ix) after December 31, 2003, at the rate of 2.16% for calendar year 2004, (x) after December 31, 2004, at the rate of 2.07% for calendar year 2005, (xi) after December 31, 2005, at the rate of 3.66% for calendar year 2006, (xii) after December 31, 2006, at the rate of 5.42% for calendar year 2007, (xiii) after December 31, 2007, at the rate of 5.81% for calendar year 2008, and (xiv) after December 31, 2008, at the rate of 3.31% for calendar year 2009, and (xv) after December 31, 2009, at the rate of 1.23% for calendar year 2010.

MICHIGAN TAX TRIBUNAL

Entered: May 13, 2010

By: Cynthia J Knoll

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STATE OF MICHIGAN
STATE OFFICE OF ADMINISTRATIVE HEARINGS AND RULES
NONPROPERTY TAX

Eldon Gilbert and Diana Gilbert,

MICHIGAN TAX TRIBUNAL
Petitioners,
MTT Docket No. 328819

v

Michigan Department of Treasury,
Respondent.

Administrative Law Judge Presiding
Thomas A. Halick

PROPOSED OPINION AND JUDGMENT

Introduction and Overview

A hearing was held before the Tax Tribunal on September 22, 2009, on 42 assessments relating to Mr. Gee's Inc.'s failure to pay sales and withholding tax for certain periods from October 2000 through May 2004. Petitioners appeared *in pro per* and testified on their own behalf. Respondent was represented by Bradley K. Morton, Assistant Attorney General. Respondent presented testimony of Angela Hodges, Departmental Technician for the Michigan Department of Treasury. The assessments in question were issued to Eldon Gilbert as a responsible corporate officer under MCL 205.27(a)(5). Separate assessments for the same tax liabilities were issued under the same assessment numbers against Diana Gilbert. Based upon the documentary evidence and sworn testimony, it is concluded that the 42 assessments set forth immediately below that were issued in the name of Eldon Gilbert shall be affirmed. The assessments issued in the name of Diana Gilbert shall be cancelled.

Assessment No.	Tax	Penalty	Interest*
M372088	1,612.50	403.12	206.83
M332358	1,420.50	355.12	188.23
M303761	1,420.50	355.12	193.86
M249129	658.91	164.72	92.72
M216712	1,516.50	379.12	220.07
M189599	1,069.70	267.41	160.03
M101073	689.96	172.47	106.38

M063088	750.31	187.58	119.05
M063087	728.76	182.19	118.84
L968637	738.23	184.55	123.84
L847654	1,130.76	282.62	194.96
L843372	838.47	209.59	148.65
L814961	855.53	213.85	155.75
L760546	876.42	219.08	163.82
L728315	830.97	207.72	158.99
L670411	817.93	204.48	160.58
L619563	1,337.23	334.28	269.23
L573170	941.65	470.76	194.25
L523655	1,034.69	517.30	218.70
L475505	1,134.73	567.33	245.48
L443970	1,145.09	572.54	253.54
L443969	1,223.22	611.62	277.06
L356614	1,289.04	644.52	299.31
L292991	1,926.72	963.36	460.65
L270792	1688.68	844.33	414.77
L238589	4,056.92	2,028.45	1,024.08
L217195	3,879.79	1,930.89	1,003.15
L098730	4,115.29	2,057.64	1,092.04

K977309	4,468.36	2,384.13	1,302.05
K925249	3,963.79	1,981.85	1,115.40
K906100	3554.37	1,777.15	1,030.59
K864855	3,793.06	1,896.51	1,131.29
K830916	5,087.66	2,543.77	1,561.09
K809659	5,678.68	4,265.73	1,892.17
K806063	4,756.44	3,567.31	1,622.92
K803735	4,126.32	2,063.11	1,301.59
K803734	5,206.97	2,603.44	1,686.14
K619031	0.00	568.76	55.10
K572071	0.00	475.66	50.14
K490247	0.00	246.19	25.25
K456887	0.00	306.05	29.74
K412750	1,657.08	1,189.00	3,479.07

*Interest is calculated as of date of assessment and continues to accrue as provided by law.

Findings of Fact

The parties stipulated to the admissibility of Respondent's Exhibits 1 through 37, and Petitioner's Exhibits 1(A, B, C), 2 (A through F), 3, and 4 (A, B).

Exhibit R 30 shows that Respondent issued "Intent to Assess" documents to Eldon Gilbert on September 9, 2004.

R 31 is a copy of a letter from Diana Gilbert to Respondent (received October 5, 2004) requesting “a hearing on this matter.” This letter is a request for an informal conference before a Department of Treasury hearing officer. An informal conference was scheduled for May 16, 2006 and June 22, 2006. The evidence includes two Informal Conference Recommendations, one for Eldon Gilbert and one for Diana Gilbert. It appears that Petitioners did not attend the informal conference. Respondent issued a final Decision and Order of Determination on June 27, 2006, which affirmed the subject assessments issued in the name of Eldon Gilbert. Exhibit R 1, page 7. Respondent issued a separate Decision and Order of Determination on June 30, 2006 affirming the same assessments (same assessment numbers) that were issued in the name of Diana Gilbert. R 33.

On July 28, 2006, Respondent issued corporate officer liability assessments corresponding to the intent to assess documents that were at issue at the informal conference.

Petitioners appealed the assessments at issue to the Tax Tribunal by letter postmarked August 26, 2006, invoking the Tribunal’s jurisdiction over the 42 assessments set forth in the previous section of this Proposed Opinion and Judgment.

Respondent’s documentary evidence included the following assessments, which are not at issue in this case:

M495344*	1,612.50	403.12	545.82
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M461725*	1,612.50	403.12	552.64
M199811**	425,532.11	106,383.03	150,775.96

*Assessments M495344 and M461725 were not the subject of Respondent's final Decision and Order of Determination, and therefore were not properly appealed to the Tax Tribunal.

**Petitioners appealed Assessment No. M199811. Respondent moved during the hearing that the Assessment No. M199811 be removed from consideration as an issue in this case. Petitioners consented to that motion, which was granted. The Tribunal renders no judgment with regard to Assessment No. M199811.

The assessments at issue arose from tax liabilities incurred by Mr. Gee's, Inc. from October 2000 through May 2004. Mr. Gee's, Inc. operated under the name, "Mr. Speeds Koffee Shop" and other names at several locations in the area of Battle Creek, Michigan. It is not disputed that Petitioner was the President of Mr. Gee's, Inc. during all periods relevant to this case.

The Corporation Information Update documents for 1998, 1999 and 2000 (R 29) indicate that Diana Gilbert was the Treasurer of Mr. Gee's, Inc. during those years; and, for 2002 she was the corporate secretary. The 2002 SBT return lists Diana Gilbert as an officer. R 17, page 5. The 1999 SBT return lists Diana Gilbert as a 50% shareholder, and also reports that she devoted 100% of her time to the business and received compensation in the amount of \$25,600. R 20 is a federal form 1120, US Corporation Income Tax Return for the year 2000, which is signed by Eldon Gilbert, President, and dated December 13, 2001, and which also reports that Diana Gilbert received officer compensation of \$26,400. There is no documentary evidence that Diana Gilbert was an officer during 2003 or 2004. It is found that Diana Gilbert was a corporate officer during calendar year 2000, 2001, and 2002. There is no evidence that anyone other than Eldon Gilbert and Diana Gilbert ever served as an officer of Mr. Gee's, Inc.

R 17 is a 2002 Michigan Single Business Tax Annual Return bearing the signature of Eldon Gilbert on page 2 in his capacity as president, signed February 16, 2004. R 18 is a “Notice of Change or Discontinuance (Michigan Department of Treasury form 163) signed by “E. Gilbert” on December 15, 2004, which indicates that Mr. Gee’s, Inc. discontinued business on May 13, 2004. R 19 is a SBT Simplified Return for 1999, which bears the signature of “Eldon Gilbert, Pres” and is dated February 6, 2001. R 21, page is a copy of a check issue by “Mr. Gee’s Restaurant” to the State of Michigan, and signed by Eldon Gilbert in the amount of \$4,760.39. The memo line for R 21 states: “Sales Tax Nov. 2000.” R 21, pages 2 through 6 are copies of checks similar to R 21 page 1, signed by Eldon Gilbert in payment of sales taxes for the periods December 2000, January 2001, February 2001, March 2001, and April 2001.

R 22 is an “Installment Agreement” on Michigan Department of Treasury form 990 signed by Eldon Gilbert for Mr. Gee’s, Inc. on March 19, 2002.

R 14, page 1, is a handwritten letter to Respondent’s Collection Division, dated December 30, 2003, and signed by Eldon Gilbert, President, Mr. Gee’s, Inc. R 14 indicates that Mr. Gee’s, Inc. sent copies of tax returns for the periods 12/01, 01/02, 02/02, 03/02, and 12/02.

Petitioners filed this appeal with the Michigan Tax Tribunal by letter dated August 26, 2006, which is signed by both Eldon Gilbert and Diana Gilbert. That letter indicated that “we would like to appeal the decision of the hearing referee in the matter of claimed taxes owed to the State

of Michigan by Mr. Gee's Inc." The letter of appeal included a copy of the notice of hearing for the "Informal Conference," which was originally schedule before a Department of Treasury hearing officer on June 22, 2006. That notice set forth 86 assessments (Intents to Assess) issued for "corporate officer liability." The notice lists most assessment numbers twice, presumably because the same assessment number was issued to both Eldon Gilbert and Diana Gilbert; however, Assessment M199811 is listed once, and No. M412750 is listed three times. The final Decision and Order of Determination (R1, page 7) included 43 assessment numbers, which were properly appealed to the Tribunal, including M199811, which was subsequently withdrawn from consideration, leaving at issue the 42 assessments indicated in the previous section of the Proposed Opinion.

Copies of the various assessments show that Respondent issued a "Final Assessment" for officer liability to each Eldon Gilbert and Diana Gilbert, for each underlying assessment that had been previously issued against Mr. Gee's, Inc. For example, Assessment Number M199811 has been previously issued to "Mr. Gee's, Inc." on April 21, 2004 and the evidence indicates that assessment was not timely appealed by the corporation, and therefore became a final and conclusive liability against Mr. Gee's, Inc.

On July 28, 2006, Respondent issued an "officer liability assessment" under that same number (M199811) to Diana Gilbert, and issued a separate assessment under the same number to Eldon Gilbert. The amount of tax indicated on the assessment issued to Mr. Gee's, Inc., Eldon Gilbert, and Diana Gilbert was the same (\$425,532). The underlying assessment issue to Mr. Gee's, Inc.

did not include a penalty; however, the assessments issued to the Gilberts included a penalty of \$106,383.03. (There are no facts in evidence to explain why a penalty was imposed on the officers for the derivative liability of the corporation, where no penalty was imposed on the corporation.) During the hearing on September 22, 2009, Respondent indicated that it voluntarily cancelled assessment number M199811 and the parties agreed that it was no longer at issue in this case. This Proposed Opinion and Judgment renders no judgment regarding assessment number M199811, which was withdrawn from consideration in this case.

Diana Gilbert testified under oath that she was an officer of the corporation Mr. Gee's, Inc. She served at various times as Vice President and Secretary. Her job duties were to fill in as a waitress, hostess, and to work in the kitchen. She testified that she never performed any functions related to taxes and that she never signed checks for Mr. Gee's, Inc. This testimony is accepted as credible. Respondent did not submit any documentary evidence to support a finding that Diana Gilbert's duties included any tax specific responsibility during the periods in question.

Eldon Gilbert had a heart attack in 1994, and in 1998 his health required him to "slow down." In 1999 and 2000 he underwent surgery and was away from the business during that time. Eldon Gilbert's health problems are well documented and supported by his testimony. Respondent does not dispute the facts pertaining to Mr. Gilbert's health problems. P 2. Mr. Gilbert testified that Diana Gilbert was never involved in payment of taxes for Mr. Gee's, Inc.

Diana Gilbert spent time at home taking care of Eldon while he was convalescing. During that time period, Petitioner's daughter, Suzanna Ashby worked for Mr. Gee's, Inc. in various capacities, including waitress, hostess, and also "helped in the office." (Suzanna Gilbert is also known as Suzanna Mansfield and Suzanna Ashby.) Respondent's exhibits include combined returns, dated 11-15-01 and 12-15-01, signed by Suzanna Gilbert, Office Manager. R 26, pages 6 and 7. Also see, R 27, various returns for 2002, and R 28 various returns for 2003, signed by Suzanna Mansfield, and Suzanna Ashby. Suzanna Gilbert was not a corporate officer.

Eldon Gilbert testified that during the periods in question, he delegated authority to perform various business functions including filing and paying state taxes to several office managers.

There came a time when the business assets of Mr. Gee's, Inc. were transferred to an unrelated entity, and Mr. Gee's, Inc. discontinued operations on May 13, 2004.

Conclusions of Law

Respondent issued the assessments in question under the "officer liability" statutes: MCL 205.27a(5) and/or, 205.65(2) and 205.351(5). For the tax periods in question, MCL 205.27a(5), section 27(a) of the Revenue Act, provided:

If a corporation liable for taxes administered under this act fails for any reason to file the required returns or to pay the tax due, any of its officers having control or supervision of, or charged with the responsibility for making such returns or payments shall be personally liable for such failure. The signature of any corporate officers on returns or negotiable instruments submitted in payment of taxes shall be prima facie evidence of their responsibility for making the returns and payments. The dissolution of a corporation shall not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due.

The officer liability provisions in the sales tax act and the income tax act (MCL 205.65(2) and 205.351(5)) are substantially similar to the Revenue Act except for the *prima facie* evidence clause. However, the Revenue Act applies to the taxes assessed in this case. See Revenue Administrative Bulletin 1989-38. The above section was amended by 2003 PA 23 (effective June 24, 2003) to include a “limited liability company, limited liability partnership, partnership, or limited partnership,” which has no effect on this case. That amendatory act also added language to indicate that the officer liability attaches to persons “who the department determines, based on either an audit or investigation,” are responsible for payment of taxes. Neither party has argued that this language substantively changes the meaning of the officer liability statute or whether it alters the burden of proof. The Tribunal renders no opinion in this regard, but shall apply the statute in a manner consistent with existing case law.

For a person to be held liable for the corporation’s taxes, it must be proven based on the department’s audit or investigation, that he or she was an officer of the corporation during the periods in question. In addition, liability will arise only if the officer (1) has control over the making of the corporation’s tax returns and payments of taxes; or (2) supervises the making of the corporation’s tax returns and payments of taxes; or (3) is charged with the responsibility for making the corporation’s returns and payments of taxes. *Keith v Department of Treasury*, 165 Mich 105; 418 NW2d 691 (1987). Personal liability will not attach unless the officer’s involvement in the financial affairs of a corporation is tax specific. *Livingstone v Department of Treasury*, 434 Mich 771, 780; 456 NW2d 684 (1990).

There is no dispute that Eldon Gilbert was a corporate officer during the relevant tax periods.

The evidence supports a conclusion that Diana Gilbert was a corporate officer during 2000, 2001, and 2002. See, the Corporation Information Update documents for 1998, 1999 and 2000, R 29. Diana Gilbert was the Treasurer of Mr. Gee's, Inc., and for 2002 she was the Secretary. However, there is no evidence that Diana Gilbert was an officer in 2003 or 2004. Therefore, as a matter of law, Diana Gilbert cannot be held liable for any of the assessments that pertain to any periods during 2003 or 2004.

With regard to the assessments that were issued for periods during the 2000, 2001, and 2002 calendar years, the evidence does not support a conclusion that Diana Gilbert is liable as a responsible corporate officer under MCL 205.27a(5). Respondent argues that is difficult to accept that Mrs. Gilbert had no involvement with the taxes for this closely held, family business. However, the sworn testimony of Mr. and Mrs. Gilbert stands un-rebutted by any direct evidence. There is no documentary evidence bearing the signature of Mrs. Gilbert on any tax return or negotiable instrument in payment of taxes, and therefore, the statutory presumption does not arise with regard to Diana Gilbert. The evidence as a whole is insufficient to support a conclusion that Diana Gilbert (1) had control over the making of the corporation's tax returns and payments of taxes; or (2) supervised the making of the corporation's tax returns and payments of taxes; or (3) was charged with the responsibility for making the corporation's returns and payments of taxes. Rather, the evidence supports a conclusion that Eldon Gilbert alone handled the corporate finances with assistance from his CPA and officer managers. As the

corporate officer with sole responsibility for tax matters, he remained responsible for supervision of the preparation and payment of taxes while he was away from the business.

In this case there is ample documentary evidence, including negotiable instruments, tax returns, and other documents related to reporting and payment of state taxes, that were signed by Eldon Gilbert before and after the periods in question. See, R 5, R 6, R 7, R 8, R 10, R 11, R 12, R 13, R 14, and R 21. The presumption of responsibility arose, based on Eldon Gilbert's signature on the relevant tax returns and checks. With regard to the assessments at issue, based on the evidence, Petitioner has failed to rebut the presumption of validity. Petitioner's evidence consisted primarily of his testimony that he had delegated corporate responsibilities to various office managers (including his daughter) during an extended period of poor health during which he was unable to be involved in the business. Petitioner cites no authority for the proposition that a responsible corporate officer can avoid liability under MCL 205.27a(5) under such circumstances. Mr. Gilbert's health problems are not a defense to officer liability under the facts of this case. This is especially true where Mr. Gilbert argues that there was no other responsible corporate officer.

The statutory presumption is not arbitrary. An officer's signature on a return or negotiable instrument indicates that he or she had final authority over the return and/or that he or she had control or supervision of preparation of the return and the payment of taxes. Petitioner's testimony that he delegated his authority to the officer managers cannot rebut the presumption in

this case. To recognize the defenses raised by Petitioner would defeat the purpose of the officer liability statute.

The proofs in this case are sufficient to impose corporate officer liability upon Eldon Gilbert without regard to whether the statutory presumption arose for all periods at issue. The evidence establishes that Mr. Gilbert was the corporate officer who had tax specific responsibility. Mr. Gilbert retained primary responsibility to file tax returns and pay taxes. A corporate officer cannot avoid liability under MCL 205.27a(5) by delegating authority to a non-officer.

A corporate officer who is charged with the responsibility to collect a state's sales or use taxes is not relieved of liability for failure to collect and pay over the taxes by delegating responsibility for collecting the taxes to subordinates. Hellerstein, *State Taxation*, ¶ 19.06[2] *Personal Liability of Corporate Officers and Employees*.

Other state courts have held that the corporate officer cannot avoid officer liability by delegation to a non-officer. "We are not persuaded that the liability imposed by Tax Law § 1133(a) may be evaded by simply delegating responsibility to a subordinate." *See, Matter of Rosenblatt v New York State Tax Commn*, 114 AD2d 127, 130; 498 NYS2d 529 (1986). *reversed on other grounds* 68 NY2d 775; 506 NYS2d 675; 498 NE2d 148 (1986); *Matter of Ragonesi v New York State Tax Commn*, 88 AD2d 707; 451 NYS2d 301 (1982); *Matter of Gardineer v State Tax Commn*, 78 AD2d 928, 929; 433 NYS2d 242 (1980). This principle is sound and fully comports with the letter and spirit of Michigan's officer liability statute. Also see, *McGlothlin v Limbach*, 57 Ohio St 3d 72; 565 NE2d 1276 (1991).

The sale of the assets of the corporation does not absolve Eldon Gilbert from his liability as a corporate officer.

Mr. Gilbert was the President of Mr. Gee's Inc. during all years relevant to this case. Mr. Gilbert testified that the only other corporate officer, Diana Gilbert, had no tax specific responsibility. That leaves only Mr. Gilbert as a potentially liability corporate officer. The facts establish that he had tax specific responsibility and he has raised no viable defense to the assessments at issue.

JUDGMENT

IT IS ORDERED that Assessments at issue are AFFIRMED with regard to Eldon Gilbert.

IT IS FURTHER ORDERED that the Assessments at issue are CANCELLED with regard to Diana Gilbert.

IT IS FURTHER ORDERED that the parties shall have 20 days from date of entry of this Proposed Order and Judgment to file exceptions and written arguments with the Tribunal consistent with Section 81 of the Administrative Procedures Act (MCL 24.281) and TTR 348. The exceptions and written arguments shall be limited to the evidence and legal argument presented to the administrative law judge. The opposing party may file a response to exceptions within 14 days after service of the exceptions. This Proposed Order and Judgment, together with any exceptions and written arguments, shall be considered by the Tribunal in arriving at a final decision in this matter pursuant to Section 26 of the Tax Tribunal Act (MCL 205.726).

MICHIGAN TAX TRIBUNAL

Entered: February 8, 2010

By: Thomas A. Halick