

STATE OF MICHIGAN  
DEPARTMENT OF LICENSING & REGULATORY AFFAIRS  
MICHIGAN ADMINISTRATIVE HEARING SYSTEM  
MICHIGAN TAX TRIBUNAL

Patrick J. Hance,  
Petitioner,

v

Michigan Department of Treasury,  
Respondent.

MTT Docket No. 359040  
Assessment Nos. M812013,  
M812497, and M869895

Tribunal Judge Presiding  
Cynthia J Knoll

**FINAL OPINION AND JUDGMENT**

**INTRODUCTION**

Petitioner, Patrick J. Hance, appeals tax assessment numbers M812013, M812497, and M869895, issued by Respondent, Michigan Department of Treasury. Petitioner contends that he is not liable for the taxes as a responsible corporate officer as Respondent claims, because he was not in a position of authority responsible for making the applicable tax returns or payments. Petitioner believes that he should not be held liable as a responsible officer under MCL 205.27a(5) because, although a corporate officer of Tool-Dex, Inc. during the periods ending December 31, 1997 through December 31, 2003, he never had control of, supervision over, or responsibility for, the filing or payment of the taxes at issue. The Tribunal agrees with Petitioner that he is not a responsible officer pursuant to MCL 205.27a(5) and therefore cancels the assessments issued against Petitioner.

**PARTIES' CONTENTIONS OF TAX LIABILITY**

Respondent's contention of the tax, interest, and penalties for the 2000 tax year is as follows

<b>Assessment Number</b>	<b>Tax Type</b>	<b>Tax</b>	<b>Interest</b>	<b>Penalties</b>
M812013	SBT	\$164,245.70	\$84,666.84	\$38,610.75
M812497	SBT	\$46,297.00	\$18,126.52	\$11,574.25
M869895	SBT	\$39,149.00	\$21,485.30	\$9,787.25

Petitioner's contention of the tax, interest, and penalties is as follows:

<b>Assessment Number</b>	<b>Tax Type</b>	<b>Tax</b>	<b>Interest</b>	<b>Penalties</b>
M812013	SBT	\$0	\$0	\$0
M812497	SBT	\$0	\$0	\$0
M869895	SBT	\$0	\$0	\$0

### **PETITIONER'S CONTENTIONS**

Petitioner requests that the Tribunal determine that he is not liable for the aforementioned assessments and cancel the assessments. In support of his contention, Petitioner argues that 1) Employee Leasing was never registered or incorporated with the State of Michigan, 2) no documents were ever filed creating Employee Leasing, and 3) Petitioner did not have any control over the operations of Employee Leasing.

### **PETITIONER'S ADMITTED EXHIBITS**

Petitioner offered the following fourteen (14) exhibits for admission and all exhibits were admitted, or partially admitted, without objection from Respondent:

- P-1 Notice of Informal Conference.
- P-2 1999 Corporation Information Update for Tool-Dex, Inc.
- P-3 Partial letter from Cox, Hodgman & Giarmarco, P.C., dated March 25, 2005
- P-4&5 2000 Single Business Tax Annual Return pages 1 & 2
- P-6 2003 U. S. Corporation Income Tax Return, page 1
- P-7 2002 U. S. Corporation Income Tax Return, page 1
- P-8 2001 U. S. Corporation Income Tax Return, page 1
- P-9 2000 U. S. Corporation Income Tax Return, page 1
- P-10 1999 U. S. Corporation Income Tax Return, page 1
- P-11 1998 U. S. Corporation Income Tax Return, page 1
- P-12 1997 U. S. Corporation Income Tax Return, page 1
- P-13&14 Federal form 2848 Power of Attorney and Declaration of Representative, pages 1&2
- P-15-19 Informal Conference Recommendation and Decision and Order of Determination, dated December 10, 2008

### PETITIONER'S WITNESS

Petitioner offered one witness: Petitioner, Patrick Hance. Petitioner, Patrick Hance testified that:

1. Petitioner began to work for Tool-Dex in approximately 1982 or 1983, in sales for the purpose of growing the business. He reported to Glenn Brisson, whose father owned the company prior to Mr. Brisson purchasing the stock and taking “the corporation over from his dad.” (Transcript, p. 19)
2. Petitioner admitted he was the President, and sole officer, for Petitioner for 1997, 1998, 1999, 2001, 2002, and 2003. (Transcript, p 189-190)
3. Petitioner’s job assignment was in sales, as a salesman, and purchase orders. (Transcript, p 20)
4. Petitioner’s compensation was primarily commission based and his salary “was whatever Glenn’s liking was. Because a lot of times my sales went way over what I should have been paid.” And when he sold more, he was not paid more. (Transcript, p. 20)
5. Mike Mattei was the in-house CPA and chief financial officer, working physically at the Tool-Dex premises. (Transcript, p. 21)
6. Petitioner was added as a check signatory for Tool-Dex in approximately 2002, strictly for signing payroll checks when someone was not in. (Transcript, p. 22)
7. He had nothing to do with banking, making bank deposits, computing payroll for Tool-Dex. (Transcript, p. 23)
8. He participated in sales meetings but did not participate in board meetings or management meetings where policies and decisions for the corporation for the past and upcoming year were discussed. (Transcript, p, 23)
9. He had nothing to do with the formation or inception of Employee Leasing, Inc. “That was all set up by Glenn Brisson, Mike Mattei, and Barry King [attorney with the law firm of Cox, Hodgman, and Giarmarco].” (Transcript, p. 23) His understanding was that the creation of Employee Leasing, Inc. “was a way of saving money for the corporation.” (Transcript, p. 26)
10. He did not interview, hire or supervise any employees of Employee Leasing, Inc.

(Transcript, p. 51)

11. He signed the 1997, 1998, and 1999 SBT returns, prepared by Mike Mattei. He did not review the returns or discuss them with Mr. Mattei. “Mike just said I need your signature on these tax documents. . . . So I signed them. . . . He’s a CPA.” (Transcript, p. 32)
12. Mr. Mattei prepared and forged Petitioner’s name on the 2000, 2001, 2002, and 2003 Single Business Tax returns. (Transcript, p. 33 -35)

### **RESPONDENT’S CONTENTIONS**

Respondent requests that the Tribunal affirm the assessments against Petitioner.

Respondent contends that because Petitioner signed the 2000 Single Business Tax return as President and the 1997 through 2004 U.S. Corporation Income Tax Returns as President, there is prima facie evidence that he was the responsible corporate officer.

### **RESPONDENT’S ADMITTED EXHIBITS**

Respondent offered the following five (5) exhibits for admission and all exhibits were admitted without objection from Petitioner:

- R-1 Employee Leasing, Inc’s 2000 Single Business Tax Return signed by Petitioner as President
- R-4 Employee Leasing, Inc. 1997 through 1999 US Corporation Income Tax Returns signed by Petitioner
- R-5 Employee Leasing, Inc. 2000 through 2003 US Corporation Income Tax Returns, signature unknown
- R-9 Decision and Order of Determination
- R-10 Corporation Information Update for Tool-Dex for 1999

### **RESPONDENT’S WITNESSES**

Respondent did not offer any witnesses.

### **FINDINGS OF FACT**

Petitioner began working for Tool-Dex, Inc., as a salesman, on or around 1982 or 1983. Tool-Dex, Inc. was owned by Glenn Brisson, Petitioner's good friend. Sometime in 1997, Mr. Brisson formed Employee Leasing, Inc. The employees formerly employed by Tool-Dex, Inc were hired by Employee Leasing, Inc. Petitioner was appointed President of Employee Leasing, Inc. and was the sole officer during the tax periods at issue. Although Petitioner was President of Employee Leasing, Inc., his role with the company was as a salesman. Petitioner did no banking, did not make bank deposits, and did not compute payroll for Tool-Dex, Inc. Further, Petitioner had no authoritative role with the company and sole responsibility was that of being a salesman for Tool-Dex, Inc.

Petitioner signed the 1997, 1998, and 1999 SBT returns, prepared by Mike Mattei. He did not review the returns or discuss them with Mr. Mattei. However, Mr. Mattei prepared and forged Petitioner's name on the 2000, 2001, 2002, and 2003 SBT returns.

Employee Leasing, Inc. failed to pay its SBT liability for tax years ending December 31, 1997 through December 31, 2003 when Respondent determined that the small business credit/alternate tax was disallowed. As such, Respondent assessed Petitioner for SBT as a liable corporate officer. Respondent issued Assessment Nos. M812013, M812497, M869895 on December 23, 2008.

### **CONCLUSIONS OF LAW**

Michigan's corporate officer liability statute, MCL 205.27a, states in subsection (5):

If a corporation, limited liability company, limited liability partnership, partnership, or limited partnership 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, members, managers, or partners who the department determines, based on either an audit or an investigation, have control or supervision of, or responsibility for, making the returns or payments is personally liable for the failure. The signature of any corporate officers, members, managers, or partners on returns or negotiable instruments submitted in payment of taxes is prima facie evidence of their responsibility for making the returns and payments. The dissolution of a corporation, limited liability company, limited liability partnership, partnership, or limited partnership does not discharge an officer's, member's, manager's, or partner's liability for a prior failure of the corporation, limited liability company, limited liability partnership, partnership, or limited partnership to make a return or

remit the tax due. The sum due for a liability may be assessed and collected under the related sections of this act.

The Michigan Supreme Court in *Livingstone v Department of Treasury*, 434 Mich 771, 783-784; 456 NW2d 684 (1990), set forth the following standard for imposing personal liability upon corporate officers:

In order to hold a person personally liable for a corporation's tax liability, the Department of Treasury must first show that the person is an officer of the corporation. Then it must show either (1) that this officer has control over the making of the corporation's tax returns and payments of taxes; or (2) that this officer supervises the making of the corporation's tax returns and payments of taxes; or (3) that this officer is charged with the responsibility for making the corporation's returns and payments of taxes to the state.<sup>1</sup>

Although MCL 205.27a(5) provides that a corporate officer's signature on either a return, or a negotiable instrument, is prima facie evidence of the officer's responsibility to make returns, *Sobol v Michigan Dept of Treasury*, 9 MTT 321, May 19, 1995, the establishment of the prima facie case then creates a rebuttable presumption. "Prima facie evidence" is evidence which is sufficient to establish a given fact, or the chain of facts constituting a party's claim or defense, which if not contradicted will remain sufficient. It is an inference or presumption of law of a fact in the absence of proof to overcome it. *Department of Environmental Quality v Worth Township*, 289 Mich App 414 (2010); 795 NW2d 13 (2011). It is a rule which does not preclude evidence, but merely declares that certain conduct shall suffice as evidence until the opponent produces contrary evidence.

To hold a person personally liable for an entity's tax liability, Respondent must first show that the person is an officer of the corporation. Here, the testimony and exhibits confirm that Petitioner was an officer of Employee Leasing, Inc. Petitioner's admitted exhibit 13 includes Single Business Tax Schedule of Shareholders and Officers for the 1997, 1998, 1999, 2001, 2002, and 2003 indicating that Petitioner was the sole officer of Employee Leasing, Inc. Further,

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<sup>1</sup> MCL 205.27(a)(5) was revised by the Michigan legislature in 2003 to update the statute to expand the "corporate officer liability" statute to include members, managers, or partners of new forms of business entities, such as limited liability partnerships and limited liability companies. (Michigan House Fiscal Agency Legislative Analysis, July 10, 2003). Therefore, the term "officer" as used in this Opinion will include members or managers of limited liability companies.

Petitioner was, in his corporate capacity as President, the signatory for the yearly Michigan Single Business Tax returns made by Employee Leasing, Inc.

The statute's signature mechanism provides for establishing a prima facie case of derivative officer liability. Respondent met this initial burden of establishing a prima facie case by demonstrating that Petitioner was a corporate officer and producing Petitioner's signature on a return. See *Dore v Department of Treasury*, unpublished opinion per curiam of the Court of Appeals, decided June 10, 2003 (Docket No. 238344).

Once the Department of Treasury's prima facie case is established, the burden of proof shifts to Petitioner to rebut the presumption that he is responsible for the corporation's failure to pay and to show that he is not a corporate officer, or that he was a corporate officer without control over or responsibility for making returns or tax payments, i.e., that he did not have tax-related responsibility. See *Drake v Michigan Dept of Treasury*, MTT Docket No 204601 (1995). Petitioner must produce evidence sufficient to convince the Tribunal that the nonexistence of the presumed fact is more probable than its existence. *Widmayer v Leonard*, 422 Mich 280, 287 (1985). Competent, material, and substantial evidence that Petitioner had tax specific duties must be weighed against the rebutting evidence.

Petitioner testified at length with regard to his duties and responsibilities, or lack thereof, in his role as President of Employee Leasing, Inc. Petitioner testified that he had nothing to do with the formation or inception of Employee Leasing, Inc. (Transcript, p 23) Further, Petitioner testified the company was set up by Glenn Brisson, Mike Mattei, and Barry King and although he was appointed President of the Company he had no control over any aspect of the company. (*Id.*) Petitioner testified he never hired, interviewed, or supervised anyone who worked at Employee Leasing, Inc. (Transcript, p 51)

Petitioner admits to signing the SBT returns for tax periods 12/1997, 12/1998, and 12/1999. However, Petitioner testified, under oath, that his signature was forged on the SBT returns for tax periods 12/2000, 12/2001, 12/2002, and 12/2003. Petitioner further testified that he did not "really" review the returns he signed or discussed them with Employee Leasing, Inc.'s CPA, Mr. Mattei; rather, Petitioner testified that "Mike just said I need your signature on these tax documents. . . . so I signed them." (Transcript, p 32) Petitioner also testified that he did not have a role in the filing and preparation of the returns, and had no control or supervision of the

person who made the returns. (Transcript, p 56)

The Tribunal finds that although Petitioner was the President of Employee Leasing, Inc., his title and role were merely substance over form. Petitioner's testimony establishes that Petitioner was a salesman of the company; and was not acting as President of Employee Leasing, Inc. The Tribunal finds there is no compelling evidence showing any of the following standards for imposing personal liability upon corporate officers: (1) that this officer has control over the making of the corporation's tax returns and payments of taxes; or (2) that this officer supervises the making of the corporation's tax returns and payments of taxes; or (3) that this officer is charged with the responsibility for making the corporation's returns and payments of taxes to the state.

Petitioner did not have any control over the making of Employee Leasing, Inc.'s tax returns and was not responsible for the payment of the taxes. Petitioner testified he did not supervise the production of Employee Leasing, Inc.'s tax returns and payments of taxes, rather the testimony establishes that others were responsible for the execution of the tax returns and Petitioner merely signed them upon completion. Petitioner also had no responsibility to make the returns and payments of taxes to Respondent. As previously stated, there were other parties that produced the tax returns and were responsible for making the payments to the State. Merely because Petitioner was, by title, President of Employee Leasing, Inc., does not justify a finding that Petitioner is a responsible corporate officer. As such, this Tribunal finds that cancellation of the subject assessment is proper and supported.

### **JUDGMENT**

IT IS ORDERED that Respondent's Final Assessment Nos. M812013, M812497, M869895, issued December 23, 2008, are CANCELLED.

This Order resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: January 9, 2012  
sms

By: Cynthia J Knoll