

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

Eric W. Gaer,
Petitioner,

MTT Docket No. 410947

v

Michigan Department of Treasury,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Eric W. Gaer, appeals tax assessments 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 Solvis Group, Inc. and The Call Center HR, Inc., 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 to Petitioner.

BACKGROUND

Petitioner was Chief Executive Officer and President of (i) Solvis Group, Inc. (“Solvis Group”), a Michigan corporation, during the period December 2006 through May 16, 2008, and (ii) The Call Center HR, Inc. (“Call Center”), a Nevada corporation, during the period December 2006 through May 17, 2009. Each of these companies was in the business of employee staffing

or payroll processing. (Transcript, pp. 40, 46) Because these companies failed to pay withholding taxes during the period April 2007 through March 2009, Respondent issued nineteen (19) Final Bills For Taxes Due (Final Assessments) to Petitioner as a “responsible party” (pursuant to MCL 205.27a(5)). Petitioner filed his appeal of these assessments to the Michigan Tax Tribunal on December 7, 2010. Respondent filed its answer to Petitioner’s appeal on April 13, 2011. Subsequently, Respondent filed a Motion for Partial Summary Disposition, contending that Petitioner failed to timely file his Petition to the Tribunal with respect to fourteen of the nineteen assessments. On February 15, 2012, the Tribunal partially granted Respondent’s motion, holding that the Tribunal lacked jurisdiction over six of the assessments. A hearing regarding the thirteen assessments (Exhibit I) over which the Tribunal retained jurisdiction was held on September 18, 2012, at which Petitioner presented four witnesses. Respondent presented one witness, whose testimony was presented by deposition. At the hearing, Respondent agreed with Petitioner that because six of the assessments issued to Petitioner related to Solvis Medical, Inc. had been paid and the State tax lien has been released, Petitioner was no longer responsible for those six assessments. See Exhibit I.

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 although he was Chief Executive Officer and President of each of the subject companies during the tax periods at issue, he never had responsibility for, supervision of, or control over, the filing of tax returns or the payment of taxes. Further, Petitioner contends that he never signed a tax return or a check for the payment of taxes for either of the subject companies. Instead, Petitioner contends that his duties included marketing, determining the strategic direction of the company,

mergers and acquisitions, and the raising of capital. Petitioner further contends that the officer with the sole responsibility for the filing of tax returns and the payment of taxes was Robert Dietrich, the Chief Operating Officer and Chief Financial Officer of both The Solvis Group and Call Center. Further, Mr. Dietrich reported directly to the respective Boards of Directors of the subject companies and did not report directly to Petitioner. Finally, Petitioner contends that Respondent has essentially ignored its own directive (Revenue Administrative Bulletin 1989-38) in concluding that simply because Petitioner signed an Installment Agreement to pay outstanding tax liabilities on behalf of Call Center and some miscellaneous corporate reports required by the State of Michigan on behalf of both companies, Petitioner is a responsible officer pursuant to MCL 205.27a(5).

PETITIONER'S ADMITTED EXHIBITS

Petitioner offered the following thirty-six (36) exhibits for admission and all exhibits were admitted without objection from Respondent:

- P-1 Compilation of communications between Zack-McNeil, PC and Mr. Robert Dietrich at the Solvis Group from March 22, 2007 to December 4, 2007.
- P-2 August 16, 2007 communication from Zack-McNeil, PC to Mr. Robert Dietrich at the Solvis Group regarding IRS transcripts.
- P-3 Solvis Medical, Inc. 2008 U.S. corporation income tax return.
- P-4 Solvis Medical, Inc. 2009 U.S. corporation income tax return.
- P-5 Solvis Healthcare, Inc. 2006 U.S. corporation income tax return.
- P-6 Solvis Healthcare, Inc. 2007 U.S. corporation income tax return.
- P-7 Compilation of Dalrada Financial Corporation filings with State of Michigan.
- P-8 January 2, 2007 Separation and Sale Agreement.
- P-9 April 1, 2007 Executive Employment Agreement between the Solvis Group, Inc. and Mr. Eric Gaer.
- P-10 April 1, 2009 Executive Employment Agreement between Solvis Healthcare, Inc. and Robert A. Dietrich.
- P-11 Settlement and Mutual Release Agreement between Solvis Healthcare, Inc. and Robert A. Dietrich.
- P-12 May 16, 2008 Purchase Agreement between Dalrada Financial Corporation and the Solvis Group, Inc.
- P-13 January 2, 2007 Promissory Note #1.
- P-14 January 2, 2007 Promissory Note #2.

- P-15 Compilation of the Bylaws of the Solvis Group, Inc. from April 17, 2007 to May 8, 2009.
- P-16 Respondent's October 17, 2008 letter of inquiry.
- P-17 Respondent's March 19, 2009 letter to Mr. Eric Gaer re: Call Center.
- P-18 Respondent's April 6, 2009 letter to Mr. Eric Gaer.
- P-19 Respondent's April 11, 2009 letter to Mr. Eric Gaer and attachment regarding Solvis Group tax information.
- P-20 Respondent's March 19, 2009 letter to Mr. Eric Gaer re: Solvis Medical, Inc.
- P-21 Respondent's April 13, 2009 letter to Mr. Eric Gaer.
- P-22 Mr. Eric Gaer's April 14, 2009 Power of Attorney.
- P-23 Respondent's April 28, 2009 letter to Eric Gaer.
- P-24 July 31, 2009 Installment Agreement bearing the stamped signature of Mr. Eric Gaer.
- P-25 Collection information statement – business form, including attachments bearing the stamped signature of Eric Gaer.
- P-26 Petitioner's supplemental answers to Respondent's first discovery requests numbers 3, 4, 5, 12, 24 and 77(C).
- P-27 Respondent's January 23, 2010 letter.
- P-28 Respondent's May 11, 2010 letter to Mr. Eric Gaer "determination of corporate officer liability"/Call Center HR, Inc.
- P-29 Respondent's May 24, 2010 letter to Mr. Eric Gaer "final demand for payment."
- P-30 Respondent's July 1, 2010 letter to Mr. Eric Gaer regarding determination of corporate officer liability/Solvis Group.
- P-31 Respondent's June 28, 2010 notice of tax lien.
- P-32 December 9, 2011 Department of Treasury official receipt Solvis Medical, Inc.'s payment of \$25,486.54 regarding assessments Q999301, Q999300, Q999299, Q556931, Q556930 and Q339989.
- P-33 December 8, 2011 Department of Treasury letter to Eric W. Gaer regarding tax assessment payoff balance.
- P-34 December 9, 2011 Michigan Department of Treasury notices of release of state tax lien regarding the assessments identified in P-32 above.
- P-35 Michigan Department of Treasury's January 5, 2011 notice of state tax lien regarding the above identified assessments.
- P-36 Solvis Medical, Inc. cashier's check from December 8, 2011 regarding payment of \$25,486.54 to the state of Michigan.

PETITIONER'S WITNESSES

Petitioner offered four witnesses: Petitioner, Eric W. Gaer; Deborah McNeil, CPA; Richard Green, PhD; Heather Plassmeyer; and Brian Bonar.

Eric W. Gaer

Mr. Gaer testified that (i) he was Chief Executive Officer and President of each of the

subject companies during the tax periods at issue, (ii) his primary responsibilities included marketing, determining the strategic direction of the company, mergers and acquisitions, and the raising of capital, (iii) he has no tax education or experience, (iv) he never had responsibility for, supervision of, or control over, the filing of tax returns or payment of taxes, (v) he was authorized by the Board of Directors to sign contracts on behalf of the subject companies, including Installment Agreements with Respondent, (vi) Robert Dietrich, as Chief Operating Officer and Chief Financial Officer of the various Solvis companies, had sole control and authority for the payment of taxes and the filing of tax returns for the subject companies during the tax periods at issue, (vii) Robert Dietrich reported directly to the Board of Directors of each of the subject companies and did not report to Petitioner, (viii) he did not sign any tax returns or tax payments made on behalf of the subject companies, (ix) his signatures on certain agreements, such as an Installment Agreement for Call Center dated July 31, 2009, were stamped signatures, and (x) while not directly responsible for tax matters, he “would have directed the appropriate people to handle tax related issues for the Company.” (Transcript, pp. 32 – 108)

Deborah McNeil

Ms. McNeil is a Certified Public Accountant, is a shareholder with the accounting firm of Zack-McNeil, P.C., located in Rochester, Michigan, and was retained by Jackson Staffing Inc. and Dalrada Financial Corporation to provide certain accounting and tax services for various Solvis companies, including The Solvis Group and Call Center HR, doing business in Michigan and Pennsylvania. Ms. McNeil testified that (i) her accounting firm was retained by Jackson Staffing and Dalrada Financial in 2003 to prepare payroll tax returns for the various Solvis companies, (ii) her primary contact at Solvis was Robert Dietrich, (iii) she never directly interacted with Petitioner, but did copy him on various emails concerning tax matters because

she was not sure who had ultimate responsibility for tax matters at these companies, (iv) the services of Zack-McNeil were terminated in 2006 or 2007, and (v) Zack-McNeil provided no tax preparation or consulting services to the Solvis companies during 2008 and 2009. (Transcript, pp. 17 – 31)

Dr. Richard H. Green

Dr. Green, a rocket scientist, was a member of the Board of Directors of Dalrada Financial beginning in 2003 and was Chairman of the Board of Directors of The Solvis Group beginning in 2006 through 2009. Dr. Green testified that (i) Petitioner was the Chief Executive Officer of Solvis during his term as Chairman of the Board, (ii) Petitioner's primary duties were to raise funds and find merger candidates, (iii) the Board of Directors looked to Petitioner to oversee the Chief Financial Officer and tax consultants, but Mr. Dietrich had direct responsibility for taxes, including acting as the liaison between the tax consultants and the companies, (iv) Petitioner often reported financial and tax information to the Board of Directors when Dietrich failed to do so, (v) Dietrich was terminated in January 2010 for performance-related reasons, and (vi) Petitioner was authorized to sign tax returns, tax-related documents, and checks. (Transcript, pp. 108 – 119)

Heather Johanna Plassmeyer

Ms. Plassmeyer was an accounting clerk and ultimately became the accounting manager for The Solvis Group during the tax periods at issue. Ms. Plassmeyer testified that (i) she reported to Robert Dietrich, the Chief Financial Officer for the Solvis companies, (ii) she provided payroll reports to Mr. Dietrich and was not directly involved in the preparation of tax returns, (iii) she prepared checks for the payment of taxes at the direction of Mr. Dietrich, and (iv) checks were generally signed using a stamp of Mr. Dietrich's signature, but on a few

occasions the stamp for Petitioner was used. (Transcript, pp. 120 – 126)

Brian Bonar

Mr. Bonar was the Chairman of the Board of The Solvis Group prior to 2007. Mr. Bonar testified that (i) Robert Dietrich, as Chief Financial Officer of the Solvis companies, had responsibility for the preparation and filing of tax returns, and (ii) Petitioner was responsible for marketing, sales, and business development for the Solvis companies, and had no responsibility for the preparation of tax returns or the payment of taxes. (Transcript, pp. 127 – 134)

RESPONDENT'S CONTENTIONS

Respondent requests that the Tribunal affirm the assessments against Petitioner. As Chief Executive Officer of the The Solvis Group and Call Center during the tax periods at issue, Petitioner had ultimate responsibility for the preparation of tax returns and the payment of taxes. Further, Petitioner signed various Installment Agreements and Powers of Attorney with Respondent regarding tax liabilities of The Solvis Group and Call Center, and was identified as a responsible officer of the subject companies on annual reports filed with the State of Michigan and in correspondence from Petitioner's counsel. Respondent further states that the testimony and evidence presented in this case support its contention that Petitioner's supervision of Mr. Dietrich, the Chief Financial Officer of the subject companies, and his reporting on tax issues to the Board of Directors, is sufficient to support its contention that Petitioner was a responsible officer pursuant to MCL 205.27a(5). Petitioner presented Angela Helm as its only witness. Pursuant to an agreement among the parties, the testimony of Ms. Helm was presented in the form of her deposition taken March 2, 2012.

RESPONDENT'S ADMITTED EXHIBITS

Respondent offered the following thirty-three (33) exhibits for admission and all exhibits

were admitted without objection from Petitioner.

- R-1 Petitioner's Petition.
- R-2 Respondent's Response to Petition.
- R-3 Intents to Assess (Q339989, Q556930, Q556931, Q999299, Q999300, Q999301, P167596, P636026, Q339643, Q339644, Q576326, Q556938, Q556937).
- R-4 Final Assessments (Q339989, Q556930, Q556931, Q999299, Q999300, Q999301, P167596, P636026, Q339643, Q339644, Q576326, Q556938, Q556937).
- R-5 Certified Mail Logs.
- R-6 Installment Agreement dated October 1, 2007.
- R-7 Michigan Domestic Profit Corporation Information Update – Year 2005.
- R-8 Michigan Profit Corporation Information Update – 2007.
- R-9 Michigan Certificate of Amendment to the Articles of Incorporation – May 5, 2008.
- R-10 Michigan Certificate of Change of Registered Office and/or Change of Resident Agent.
- R-11 Power of Attorney dated April 14, 2009, The Solvis Group.
- R-12 Correspondence from Attorney Castellani to Treasury dated April 16, 2009, including Executive Employment Agreement between The Solvis Group and Eric Gaer, and Agreement between Dalrada Financial and The Solvis Group.
- R-13 Correspondence from Attorney Castellani to Angela Hodges dated January 12, 2010, including Executive Employment Agreement between The Solvis Group and Eric Gaer.
- R-14 Correspondence from Attorney Castellani to Treasury dated May 3, 2010, including Executive Employment Agreement between Solvis Healthcare and Robert Dietrich, Internet Article, and Executive Employment Agreement between The Solvis Group and Eric Gaer.
- R-15 Facsimile from Attorney Castellani to Treasury, including Agreement between Dalrada Financial and The Solvis Group.
- R-16 Installment Agreement (Solvis Medical) dated March 10, 2009.
- R-17 Corporate Documents dated August 30, 2007 – Nevada.
- R-18 Facsimile from Attorney Castellani to Treasury, including Power of Attorney (Re: Gaer) dated April 14, 2009.
- R-19 Correspondence re: Informal Hearings (Solvis Medical), including correspondence from Attorney Castellani to Treasury dated September 7, 2010, and correspondence from Treasury to Attorney Castellani dated September 13, 2010.
- R-20 Michigan – Foreign Corporation Information Update dated March 2, 2010.
- R-21 Installment Agreement (Call Center) dated March 10, 2009.
- R-22 Installment Agreement (Call Center) dated July 31, 2009.
- R-23 Revenue Administrative Bulletin 1989-38.
- R-24 Correspondence re: Informal Hearings (Solvis Group), including correspondence from Attorney Castellani to Treasury dated August 12, 2010 and correspondence from Treasury to Attorney Castellani dated August 26, 2010.
- R-25 Correspondence from Treasury to Eric Gaer dated April 28, 2009.
- R-26 Correspondence re: Informal Hearings (Call Center), including correspondence from Attorney Castellani to Treasury dated September 7, 2010 and correspondence from Treasury to Attorney Castellani dated September 13, 2010.

- R-27 Correspondence from Treasury to Eric Gaer dated May 11, 2010.
- R-28 Correspondence from Treasury to Eric Gaer dated July 1, 2010.
- R-29 Corporate Officer Liability Frequently Asked Questions.
- R-30 Petitioner's Answers to Respondent's First Discovery Requests, including correspondence from Treasury to Attorney Castellani, blank Installment Agreement, blank Collection Information Statement, blank Form 990, letter from Attorney Castellani to Solvis Medical, Installment Agreement dated July 31, 2009, and Collection Information Statement.
- R-31 Petitioner's Supplemental Answers to Respondent's First Discovery Requests 3, 4, 5, 12, 24 and 77(c), including Powers of Attorney, Letters of Inquiry, Final Demand for Payment, Liability Information, Final Demand for Payment from Corporate Officer, By-Laws, and Board of Directors meeting minutes, Gaer resignation letter, Separation and Sale Agreement dated January 2, 2007 between Dalrada and Solvis Group, Purchase Agreement between Dalrada and Solvis Group dated May 16, 2008, Agreement to Accept Collateral in Satisfaction of Obligations between Solvis Healthcare and American Marine dated March 5, 2010, Settlement and Mutual Release Agreement between Solvis Healthcare and Robert Dietrich dated January 29, 2010, Executive Employment Agreement between Solvis Healthcare and Robert Dietrich dated April 1, 2009, and Executive Employment Agreement between the Solvis Group and Eric Gaer.
- R-32 Treasury's Answers to Petitioner's Request for Production of Documents.
- R-33 Transcript of Deposition of Angela Helm dated March 2, 2012.

RESPONDENT'S WITNESS

With the concurrence of Petitioner's counsel, Respondent offered the testimony of Angela Helm, Michigan Department of Treasury technician, taken by deposition on March 2, 2012. (Exhibit R-33) Ms. Helm testified that (i) she relies on Revenue Administrative Bulletin ("RAB") 1989-38 in making determinations of officer liability, (ii) in addition to looking at whether the taxpayer's officer signed checks and tax returns, she also looks at applications for registration, Michigan Annual Reports, audit or collection reports, and payment plans to determine if an officer of the taxpayer exerted control over the taxpayer's tax issue, (iii) in determining whether the taxpayer's officer supervised the making of returns or payment of taxes, she looks at whether that officer signed a Power of Attorney authorizing an individual to discuss tax matters with the Department or whether they verified information on the tax returns, (iv) she relies on the ten evidentiary standards listed in RAB 1989-38 in determining whether an officer

of a taxpayer is liable for that taxpayer's unpaid taxes, (v) the signing by Petitioner of (a) an installment agreement between Solvis Medical and Treasury dated March 10, 2009, (b) the 2010 Michigan Annual Report for Solvis Medical, and (c) a Power of Attorney dated April 14, 2009, signed by Petitioner on behalf of Solvis-Michigan, Inc. formerly The Solvis Group, Inc., as well as Nevada corporate reports listing Petitioner as an officer of Solvis Medical, and his executive employment agreement with The Solvis Group, Inc., all satisfy one or more of the ten evidentiary standards listed in RAB 1989-38, which led to Respondent's determination that Petitioner was an officer of Solvis Medical, responsible for taxes, (vi) the signing by Petitioner of (a) an installment agreement between The Solvis Group and Treasury dated October 1, 2007, (b) Powers of Attorney dated April 14, 2009, signed by Petitioner on behalf of The Solvis Group, and (c) Corporation Information Updates, as well as other corporate documents filed with the State of Michigan listing Petitioner as an officer of The Solvis Group, a letter from Petitioner's authorized representative dated January 12, 2010, stating that "Mr. Gaer is willing to concede that he was a responsible officer of The Solvis Group, Inc. from April 1, 2007 to May 16, 2008," (Exhibit 33, p 47) and documents regarding the sale of The Solvis Group to Dalrada, including tax provisions, signed by Petitioner on behalf of The Solvis Group, all satisfy one or more of the ten evidentiary standards listed in RAB 1989-38, which led to Respondent's determination that Petitioner was an officer of The Solvis Group, responsible for taxes, (vii) assessments issued to Petitioner for unpaid taxes of The Solvis Group for periods prior to March 2007 were cancelled by Respondent because Petitioner's employment with The Solvis Group began on April 1, 2007, and (viii) the signing by Petitioner on behalf of Call Center HR of (a) an Installment Agreement dated March 10, 2009, and (b) an Installment Agreement dated July 31, 2009, satisfy one or

more of the ten evidentiary standards listed in RAB 1989-38, which led to Respondent's determination that Petitioner was an officer of Call Center HR, responsible for taxes.

FINDINGS OF FACT

1. A total of nineteen Bills for Taxes Due (Final Assessments) were issued to Petitioner on February 18, 2009, July 14, 2009, and November 3, 2009.
2. By its Order dated February 15, 2012, the Tribunal determined that it lacked jurisdiction over six of the Bills for Taxes Due (Final Assessments) appealed by Petitioner.
3. Bills for Taxes Due (Final Assessments) Q339989, Q556930, Q556931, Q999299, Q999300, and Q999301 were paid by Solvis Medical, Inc. on December 9, 2011, and are no longer the subject of this appeal (Exhibits P-32, P-33, P-34, P-35, P-36, Transcript, p. 136)
4. The following Bills for Taxes Due (Final Assessments) remain as the subjects of this appeal: P167596, P636026, Q339643, Q339644, Q576326, Q556938, and Q556937.
5. Bills for Taxes Due (Final Assessments) P167596 and P636026 were issued to Petitioner as a responsible officer of Solvis Group, Inc. for the tax periods May 2007 and October 2007.
6. Bills for Taxes Due (Final Assessments) Q339643, Q339644, Q576326, Q556938, and Q556937 were issued to Petitioner as a responsible officer of Call Center HR, Inc. for the tax periods May 2008, June 2008, July 2008, August 2008, and September 2008.
7. Petitioner was Chief Executive Officer and President of The Solvis Group, Inc., and its affiliates, from December 2006 to March 2010.
8. Petitioner was Chief Executive Officer and President for Call Center HR, Inc. from December 2006 to May 17, 2009.

9. Petitioner executed an Installment Agreement with Respondent on behalf of Solvis Group on October 1, 2007.
10. Petitioner executed Installment Agreements with Respondent on behalf of Call Center HR on March 10, 2009, and July 31, 2009.
11. The Solvis Group, Inc. changed its name to Solvis-Michigan, Inc., via a Certificate of Amendment, signed by Petitioner, filed with the Michigan Department of Labor & Economic Growth, Bureau of Commercial Services, Corporations Division on May 9, 2008.
12. The 2007 Michigan Corporation Update filed for Solvis-Michigan, Inc. identified Petitioner as President and Director.
13. A Change of Registered Office and/or Change of Resident Agent, signed by Petitioner as Chief Executive Officer, was filed with the Michigan Department of Labor & Economic Growth, Bureau of Commercial Services, Corporations Division on June 11, 2008.
14. A Power of Attorney stating the representation of Solvis-Michigan by the Fraser law firm was signed by Petitioner on April 14, 2009.
15. Correspondence dated January 12, 2010, from the Fraser law firm to Respondent stated (i) “[b]etween August 2006 and April 2007, The Solvis Group, Inc. was a Michigan corporation owned approximately 78% by Dalrada Financial Corporation. They were two separate legal entities with separate boards of directors, separate officers and separate assets and employees,” (ii) “Prior to April 1, 2007, Eric Gaer was employed by Dalrada Financial Corporation in their marketing department. He did not have any operating responsibility for Dalrada and did not have authority to sign checks or tax returns for Dalrada Financial Corporation, and was not involved in management decisions,” and (iii)

“ . . . Mr. Gaer is willing to concede that he was a responsible officer of The Solvis Group, Inc. from April 1, 2007, through May 16, 2008 . . . ”

16. Testimony from Petitioner established that each of the contentions made by the Fraser law firm in its January 12, 2010, correspondence to Respondent were in error.

(Transcript, pp. 56 – 63)

17. Respondent issued Final Assessment P167596 to Petitioner for the 05/07 tax period, on February 18, 2009, in the amount of \$0.00, penalty of \$390.33, and statutory interest for Solvis Group’s late payment of tax.

18. Respondent issued Final Assessment P636026 to Petitioner for the 10/07 tax period, on February 18, 2009, in the amount of \$0.00, penalty of \$1,459.05, and statutory interest for Solvis Group’s late payment of tax.

19. Respondent issued Final Assessment Q339643 to Petitioner for the 05/08 tax period, on July 14, 2009, in the amount of \$20,332.12, penalty of \$5,083.02, and statutory interest for Call Center HR Inc.’s failure to file or pay withholding tax.

20. Respondent issued Final Assessment Q339644 to Petitioner for the 06/08 tax period, on July 14, 2009, in the amount of \$21,255.99, penalty of \$5,313.96, and statutory interest for Call Center HR Inc.’s failure to file or pay withholding tax.

21. Respondent issued Final Assessment Q576326 to Petitioner for the 07/08 tax period, on July 14, 2009, in the amount of \$18,956.04, penalty of \$4,739.00, and statutory interest for Call Center HR Inc.’s failure to file or pay withholding tax.

22. Respondent issued Final Assessment Q556938 to Petitioner for the 08/08 tax period, on July 14, 2009, in the amount of \$25,193.84, penalty of \$6,298.45, and statutory interest for Call Center HR Inc.’s failure to file or pay withholding tax.

23. Respondent issued Final Assessment Q556937 to Petitioner for the 09/08 tax period, on July 14, 2009, in the amount of \$19,649.01, penalty of \$4,912.25, and statutory interest for Call Center HR Inc.'s failure to file or pay withholding tax.

CONCLUSIONS OF LAW

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

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. [Emphasis Added]

Once a prima facie case is established, by producing a corporate officer's signature on a return or negotiable instrument submitted in payment of taxes, the burden of proof shifts to the corporate officer to rebut the presumption that he or she is responsible for the corporation's failure to pay tax, by producing "evidence sufficient to convince the Tribunal that the nonexistence of the presumed fact is more probable than its existence." *Penner v Dep't of Treasury*, MTT No. 358583 (2010), p 10, citing *Widmayer v Leonard*, 422 Mich 280, 287; 373 NW2d 538 (1985).

Here, "Respondent relies on a plethora of documentation as evidence that Petitioner was the responsible corporate officer"; however, such documentation "is neither a tax return nor a negotiable instrument" and therefore is not sufficient to establish that the statutory presumption has been met. *Vallone v Dep't of Treasury*, MTT No. 385120 (2011), p 4. Since Respondent failed to establish its prima facie case, it is Respondent's burden to prove that Petitioner is a responsible officer under MCL 205.27a(5).

To hold a person personally liable for an entity's tax liability under MCL 205.27a(5), Respondent must first show that the person is an officer of the corporation. Here, the testimony and exhibits confirm that Petitioner was an officer (Chief Executive Officer and President) of Solvis Group and Call Center¹ during the tax periods at issue.

After establishing that a person is an officer of the corporation, Respondent must then prove that the officer has "control or supervision of, or [is] charged with the responsibility for, making the returns or payments" to show that the officer is personally liable for the corporation's failure to file the required returns or to pay the tax due. See *Dore v Dep't of Treasury*, unpublished opinion per curiam of the Court of Appeals, issued June 10, 2003 (Docket No. 238344). In an effort to substantiate its contentions that Petitioner is a responsible corporate officer under MCL 205.27a(5), Respondent, in heavily relying on guidance provided in Revenue Administrative Bulletin 1989-38 ("RAB 1989-38"), entered numerous documents into evidence which either contain Petitioner's handwritten signature, Petitioner's signature via a signature stamp, or state Petitioner's position with the companies as CEO and/or President.

RAB 1989-38 provides the following regarding evidentiary standards for officer liability:

The Department considers certain documents that would further its ability to present facts regarding officer standing and officer responsibility. Any of the following documents may be utilized to support or demonstrate the facts necessary to assert officer liability:

1. Application for registration.
2. Returns filed by the corporation during the period noted on the proposed assessment.
3. Michigan Annual Reports which include the period assessed.
4. Audit or collection reports that identify an individual officer as responsible for payment and reporting of taxes.
5. Correspondence from the taxpayer that identifies an officer as responsible for payment or reporting of taxes.

¹ As previously discussed, the Tribunal's Final Opinion and Judgment in this matter will address Petitioner's liability for two assessments related to The Solvis Group, Inc. and five assessments related to Call Center HR, Inc.

6. Collector reports establishing regular contact with a corporate officer regarding unpaid taxes.
7. Sales, use and withholding returns that identify corporate officers.
8. Payment plan agreements signed by corporate officers.
9. Checks in payment of taxes signed by an officer, or subpoenaed bank signature cards for the periods in question.
10. Any other documents that would tend to prove or disprove corporate officer liability.

While explanatory guidelines, such as RABs, may be instructive, they “do not have the force of law and are not legally binding.” *Ohio Savings Bank v Dep’t of Treasury*, unpublished opinion per curiam of the Court of Appeals, issued October 13, 2009 (Docket No. 284656), p 3, citing *Kmart Michigan Prop Services, LLC v Dep’t of Treasury*, 283 Mich App 647, 654; 770 NW2d 915 (2009).

Respondent relied on Installment Agreements and a Power of Attorney signed by Petitioner, which were filed with Respondent and are included as indicia of officer liability under RAB 1989-38, as evidence of Petitioner’s tax-specific responsibility; however, the Tribunal agrees with Petitioner that the Installment Agreements and the Power of Attorney shall be viewed as contracts, rather than tax documents. At no point did Respondent provide any tax returns or checks signed by Petitioner, as is required under MCL 205.27a(5) to find a corporate officer personally liable for an entity’s unpaid taxes. The Tribunal finds Respondent’s attempt to find Petitioner personally liable for the tax liabilities of either The Solvis Group or Call Center, absent a tax return or tax payment check signed by Petitioner, is not supported by any reasonable interpretation of existing statute or case law. “Because [Respondent] has legal responsibility to collect taxes and is responsible for ‘[s]pecialized service for tax enforcement, through establishment and maintenance of uniformity in definition, regulation, return and payment,’ . . . we accord respectful consideration to its position. However, [as illustrated above,] ‘the agency’s interpretation is not binding on the courts, and it cannot conflict with the Legislature’s intent as

expressed in the language of the statute at issue.” *Kmart Michigan Prop Services, LLC, supra*, p 651, citing *In re Complaint of Rovas Against SBC Michigan*, 482 Mich 90, 103; 754 NW2d 259 (2008).

Based on the testimony and the evidence, the Board of Directors of the companies gave Mr. Dietrich, as Chief Financial Officer and Chief Operating Officer, the responsibility for insuring that tax returns were signed and filed and tax payments were made. While Petitioner confirmed with other members of the Board that “outstanding taxes needed to be paid,” (Transcript, p 88) Petitioner did not have direct control or supervision over Mr. Dietrich. Mr. Dietrich was the sole contact with the outside accounting firm that was retained by the Board and Mr. Dietrich reported all tax-related matters directly to the Board. In addition, while Petitioner had authority to sign checks, there was no evidence that Petitioner actually signed checks for tax payments.

All of the testimony presented shows that, although Petitioner was the CEO and President of The Solvis Group and Call Center, Petitioner’s responsibility involved raising capital, marketing, and identifying potential merger targets for the companies. None of the testimony and evidence presented by the parties supports Respondent’s contention that Petitioner’s involvement in the companies was “tax specific.” See *Jamian v Dep’t of Treasury*, unpublished opinion per curiam of the Court of Appeals, issued October 20, 2005 (Docket No. 256522), p 1, citing *Livingston v Dep’t of Treasury*, 434 Mich 771, 780; 456 NW2d 684 (1990). MCL 205.27a(5) “imposes personal liability on a corporate officer for unpaid corporate taxes *only if* the officer holds *and* exercises authority within the corporation with regard to the taxes at issue.” *Cygan v Dep’t of Treasury*, unpublished opinion per curiam of the Court of Appeals, issued March 13, 1998 (Docket No. 192785), p 3. [Emphasis added.] No such authority was

established in this case. The Tribunal, therefore, finds that Respondent has failed to prove that Petitioner had “control or supervision of, or [was] charged with the responsibility for, making the returns or payments.” *Dore, supra*.

JUDGMENT

IT IS ORDERED that Respondent’s Final Assessments P167596 and P636026 issued to Petitioner on February 18, 2009, for The Solvis Group, and Final Assessments Q339643, Q339644, Q576326, Q556938, and Q556937 issued to Petitioner on July 14, 2009, for Call Center HR, Inc., are CANCELLED.

IT IS FURTHER ORDERED that because Final Assessments Q339989, Q556930, Q556931, Q999299, Q999930, and Q999301 issued to Petitioner for Solvis Medical, Inc. have been paid in full and all liens for these Final Assessments have been released, the Tribunal does not retain jurisdiction over said Final Assessments.

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

MICHIGAN TAX TRIBUNAL

By: Steven H. Lasher

Entered: 10/16/12

EXHIBIT I

ASSESSMENTS ISSUED AGAINST PETITIONER THAT REMAIN THE SUBJECT OF THIS APPEAL

Company	Assessment No.	Tax Period	Tax Due	Penalty	Interest*
Issued February 18, 2009**					
Solvis Group	P167596	5/07	0	\$390.33	
Solvis Group	P636026	10/07	0	\$1,459.05	
Issued July 14, 2009					
Solvis Medical, Inc.	Q339989***	5/08	\$4,082.72	\$1,020.67	
Solvis Medical, Inc.	Q556930***	8/08	\$5,110.23	\$1,277.55	
Solvis Medical, Inc.	Q556931***	9/08	\$4,078.23	\$1,019.55	
Call Center HR, Inc.	Q339643	5/08	\$20,332.12	\$5,083.02	
Call Center HR, Inc.	Q339644	6/08	\$21,255.99	\$5,313.96	
Call Center HR, Inc.	Q576326	7/08	\$18,956.04	\$4,739.00	
Call Center HR, Inc.	Q556938	8/08	\$25,193.84	\$6,298.45	
Call Center HR, Inc.	Q556937	9/08	\$19,649.01	\$4,912.25	
Issued November 3, 2009					
Solvis Medical, Inc.	Q999299***	1/09	\$1,993.67	\$199.36	
Solvis Medical, Inc.	Q999300***	2/09	\$2,803.51	\$700.86	
Solvis Medical, Inc.	Q999301***	3/09	\$2,917.11	\$729.26	

*Interest accrues per statute

** Eight final assessments were issued to Petitioner on February 18, 2009, for Solvis Group; however, the Tribunal denied jurisdiction over six of the assessments (Assessment Nos. P167595, P570353, P593920, P747186, P747187 and Q001430) by Order dated February 15, 2012.

*** These assessments were paid by Solvis Medical on December 9, 2011; the State Tax Lien was released on December 9, 2011.