

STATE OF MICHIGAN
COURT OF APPEALS

ROSA BRANNON,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

UNPUBLISHED

March 14, 1997

No. 184262

Michigan Tax Tribunal

LC No. 00174389

SIBERA BRANNON,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

No. 186545

Michigan Tax Tribunal

LC No. 00174390

SIBERA BRANNON,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

No. 186546

Michigan Tax Tribunal

LC No. 00195910

SIBERA BRANNON,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

No. 186547
Michigan Tax Tribunal
LC No. 00220645

TROY BRANNON,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

No. 186548
Michigan Tax Tribunal
LC No. 00174391

R & T TAXI, INC.,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

No. 186549
Michigan Tax Tribunal
LC No. 00174392

SB&B, INC.,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

No. 186550
Michigan Tax Tribunal
LC No. 00174393

SIGMONT TAXI, INC.,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

VEEDER TAXI, INC.,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

WESTFIELD TAXI, INC.,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

HFZ TAXI, INC.,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

Before: Hoekstra, P.J., and Marilyn Kelly and J.B. Sullivan,* JJ.

*Former Court of Appeals judge, sitting on the Court of Appeals by assignment.

No. 186551
Michigan Tax Tribunal
LC No. 00174394

No. 186552
Michigan Tax Tribunal
LC No. 00174395

No. 186553
Michigan Tax Tribunal
LC No. 00174396

No. 186554
Michigan Tax Tribunal
LC No. 00174674

PER CURIAM.

Petitioners appeal as of right from the Tax Tribunal's decision affirming the judge's denial of their motion for summary disposition, except with regard to two tax assessments, and affirming her grant of summary disposition for respondent. We affirm.

Petitioners Rosa and Troy Brannon contend that the tribunal erred in upholding the tax assessments respondent issued against them. As petitioners admit, they had the burden of proving that the assessments were incorrect. *Kellogg Co v Dep't of Treasury*, 204 Mich App 489, 493; 516 NW2d 108 (1994).

A review of the record indicates that Rosa and Troy Brannon knew or should have known that Sibera Brannon was using their names for business purposes and using them in the gasoline tax refund program. Moreover, Rosa received checks in her name from the Department of Treasury and cashed some of those checks herself. Troy endorsed checks and benefited financially from money he received from refund claims. The tribunal's conclusion that petitioners had not met their burden was supported by competent, material and substantial evidence on the whole record. *Saginaw General Hosp v City of Saginaw*, 208 Mich App 595, 598 n 1; 528 NW2d 805 (1995).

Petitioner Sibera Brannon and the corporate petitioners contend that the tribunal erred in upholding the fraud penalties issued against them because respondent failed to prove that Sibera had a fraudulent state of mind. We disagree.

Intent may be proved by circumstantial evidence and may be inferred from the facts and circumstances of the case. *Summerville v Dep't of Treasury*, 7 MTT 916, 920 (1994), citing *People v Kimble*, 60 Mich App 690; 233 NW2d 26 (1975), *People v Strong*, 143 Mich App 442, 452; 372 NW2d 335 (1985). Sibera testified at the hearing that he (1) participated in the gasoline refund program from 1984 to 1989, (2) submitted invoices which he filled out, (3) signed some of the invoices with fake initials, and (4) submitted claim forms in others' names, without their consent. He received and cashed all of the checks from these claims and acknowledged that the claim form required the original invoice. We find that there was competent, substantial and material evidence on the whole record from which to infer an intent to defraud. *Summerville v Dep't of Treasury*, 7 MTTR 916, 920 (1994).

Finally, petitioners argue that the fraud penalty was improperly assessed after expiration of the statutory period of limitations. We disagree.

MCL 205.27a(2); MSA 7.657(27a)(2) provides in pertinent part:

If a person subject to tax fraudulently conceals any liability for the tax or a part of the tax, or fails to notify the department of any alteration in or modification of federal tax liability, the department, within 2 years after discovery of the fraud or the failure to notify, shall assess the tax with penalties and interest as provided by this act, computed from the date on which the tax liability originally accrued.

The running of the statute of limitations is suspended for the period pending a final determination of the tax. MCL 205.27a(3); MSA 7.657(27a)(3).

Petitioners and respondent agree that the statute of limitations is two years. Petitioners admit that initial notices were received in 1990, less than one year after respondent discovered the fraud. Petitioner further acknowledges that the administrative appeal process was pursued upon issuance of the initial assessments and that they exercised their right to an informal conference pursuant to MCL 205.21(2); MSA 7.657(21)(2). The fact that final assessments did not occur until 1993 and 1994, more than two years later, is irrelevant. The limitations period was suspended while petitioners administratively appealed from the assessment. MCL 205.27a(3); MSA 7.657(27a)(3). See *Fisher v Dep't of Treasury*, 6 MTTR 63 (1990).

Affirmed.

/s/ Joel P. Hoekstra

/s/ Marilyn Kelly

/s/ Joseph B. Sullivan