

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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MICHAEL WILLIAM CYGAN,

UNPUBLISHED  
March 13, 1998

Plaintiff-Appellant,

v

No. 192785  
Michigan Tax Tribunal  
LC No. 00135626

DEPARTMENT OF TREASURY,

Defendant-Appellee.

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Before: Doctoroff, P.J., and Reilly and Allen\*, JJ.

PER CURIAM.

Plaintiff appeals as of right from a judgment entered by the Michigan Tax Tribunal, holding him derivatively liable for \$217,920.54 in unpaid withholding taxes plus interest based on his position as a corporate officer. We affirm.

Plaintiff argues that the tribunal erred in holding him derivatively liable for the unpaid taxes because defendant presented no evidence to support the tribunal's finding that plaintiff had control and responsibility over the payment of the corporation's withholding taxes. MCL 205.27a(5); MSA 7.675(27a)(5) provides in pertinent part:

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 the returns or payments is personally liable for the failure. The signature of any corporate officers on returns or negotiable instruments submitted in payment of taxes is prima facie evidence of their responsibility for making the returns and payments. [MCL 205.27a(5); MSA 7.675(27a)(5).]

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

This Court's review of The Tax Tribunal's decision is limited to whether the decision authorized by law and is supported by competent, material, and substantial evidence on the whole record. *Stackpoole v Dep't of Treasury*, 194 Mich App 112, 114; 486 NW2d 322 (1992).

We conclude that the record supports the tribunal's finding. The record shows that plaintiff served as corporate secretary for the months included in the liability assessment. Further, the record contains two powers of attorney by which plaintiff granted to another corporation employee the power to prepare the withholding taxes for the same period of time. The testimony of this employee indicated that plaintiff was his immediate supervisor within the corporate hierarchy. We conclude that this evidence is competent, material and substantial proof that plaintiff had supervisory authority over the making of the corporation's withholding tax returns for the period at issue.

We reject plaintiff's assertion that the resolution of this issue is governed by *Bedikian v Michigan Tax Tribunal*, 1991 Mich Tax LEXIS 50 (Docket No. 104045, July 10, 1991). The officer liability statute at issue in *Bedikian* was MCL 206.351(5); MSA 7.557(1351)(5), which bases a finding of officer liability on a showing that the officer in question has "control, supervision of, or [is] charged with the responsibility for making the returns *and* payments" of the unpaid taxes. *Id.* (Emphasis added). Conversely, MCL 205.27a(5); MSA 7.675(27a)(5) states that derivative liability may be imposed on any corporate "officers having control or supervision of, or charged with the responsibility for, making the returns *or* payments." *Id.* (Emphasis added). In *Bedikian*, the tribunal specifically noted that it did not read the conjunctive "and" as if it meant "or." *Bedikian, supra* at \*3 n 5.

Plaintiff also argues that the tribunal's holding is based on an erroneous interpretation of MCL 205.27a(5); MSA 7.675(27a)(5). Statutory interpretation is a question of law reviewed de novo on appeal. *People v Hammons*, 210 Mich App 554, 557; 534 NW2d 183 (1995).

Plaintiff first alleges that the tribunal incorrectly found that the statute imposes a type of strict liability. We believe that plaintiff's argument is based on an erroneous reading of the tribunal's opinion. The record indicates that the tribunal was aware that the statute's signature mechanism establishes only a prima facie case of derivative officer liability. When the tribunal characterized the statute as imposing "a type of strict liability," it was not, as plaintiff suggests, concluding that the signature mechanism establishes liability per se. Rather, the tribunal was simply indicating that plaintiff's state of mind is irrelevant to the resolution of the case. This is in keeping with the precepts of derivative liability, through which a corporate officer is held personally liable based upon the actions of the corporation. See *Keith v Dep't of Treasury*, 165 Mich App 105, 110; 418 NW2d 691 (1987).

Plaintiff next argues that the tribunal erred in finding that an officer's signature on any tax return or corporate document is enough evidence of control to impose liability. We agree that the tribunal did misinterpret the statute in the manner cited by plaintiff. However, that error was harmless given our conclusion that the finding of derivative liability is supported by competent, material and substantial evidence. We initially note that there is an important link between MCL 205.27a(5); MSA 7.675(27a)(5) and the officer liability provisions found in the various taxing statutes. Other than the former officer liability statute found in the Motor Fuel Tax Act, MCL 207.101 *et seq.*; MSA 7.291 *et seq.*, the specific officer liability statutes found in the various taxing acts have not been repealed. The

Michigan Department of Treasury has concluded that the interpretation of those liability statutes should be based on the wording of MCL 205.27a(5); MSA 7.675(27a)(5). RAB 89-38, 1989-38 (April 25, 1989). Specifically, the department reads these other officer liability statutes as supporting a finding of derivative liability where an officer is responsible for making either the returns *or* payments of the various taxes. We see no reason why we should not defer to this construction of the statute. *Jones-Jennings v Hutzel Hospital (On Remand)*, 223 Mich App 94, 105; 565 NW2d 680 (1997).

To understand how the statute's signature mechanism works in light of the link between MCL 205.27a(5); MSA 7.675(27a)(5) and the various taxing acts, we must first look to the sentence which immediately precedes it in the statute. This sentence begins, "If a person liable for a tax administered under *this act* . . . ." MCL 205.27a(5); MSA 7.675(27a)(5) (emphasis added). However, the statute is found among those statutory provisions that establish a revenue division within the Department of Treasury and outline its powers and duties. No specific taxes are administered under these provisions. Given the link between MCL 205.27a(5); MSA 7.675(27a)(5) and the other taxing acts, we conclude that this portion of the statute refers to whatever taxing act is implicated in a given circumstance. See *Altman v Meridian Twp*, 439 Mich 623, 635; 487 NW2d 155 (1992) (Every word of a statute should be given meaning and no word should be treated as surplusage or rendered nugatory if at all possible). Therefore, in order to maintain internal consistency within the statute, we conclude that a corporate officer's signature "on returns or negotiable instruments submitted in payment of taxes" is prima facie evidence of control, responsibility or supervisory authority over the making of only the specific taxes implicated.

The signature mechanism, however, is not the only way a finding of derivative officer liability can be supported. As previously noted, the record does contain competent, material and substantial evidence that plaintiff exercised supervisory authority over the making of the tax returns at issue. Therefore, the tribunal's misreading of MCL 205.27a(5); MSA 7.675(27a)(5) was harmless. MCR 2.613(A).

Finally, plaintiff argues that holding him personally liable for the unpaid taxes violates his due process rights given his lack of knowledge that the corporation was not paying the withholding taxes. We disagree. A statute is presumed constitutional absent a clear showing to the contrary. *Caterpillar, Inc v Dep't of Treasury*, 440 Mich 400, 413; 488 NW2d 182 (1992). The presumption of constitutionality is especially strong with respect to taxing statutes. *Id.*

A taxpayer challenging a tax on constitutional grounds must overcome a strong presumption in favor of the taxing statute's validity and point out with specificity the constitutional provision that is violated. A taxing statute must be shown to "clearly and palpably violate[] the fundamental law" before it will be declared unconstitutional. [*Id.* at 414-415 (citations omitted).]

Because a rational relationship exists between MCL 205.27a(5); MSA 7.675(27a)(5) and the legitimate state goal of raising revenue, we conclude that holding plaintiff liable under the statute does not violate his rights of due process. *Verbison v Auto Club Ins Ass'n*, 201 Mich App 635, 638; 506 NW2d 920 (1993). The statute 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. We believe that holding these corporate officers personally liable for unpaid corporate taxes is reasonably related to the legitimate goal of raising revenue. Accordingly, we conclude that plaintiff has failed to show that the statute palpably violates his due process rights.

Affirmed.

/s/ Martin M. Doctoroff

/s/ Glenn S. Allen, Jr.

I concur in result only

/s/ Maureen Pulte Reilly