

STATE OF MICHIGAN
COURT OF APPEALS

GREGORY C. JAMIAN,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

UNPUBLISHED

October 20, 2005

No. 256522

Tax Tribunal

LC No. 00-289938

Before: Talbot, P.J., Whitbeck, C.J., and White, J.

PER CURIAM.

Petitioner appeals as of right from a Tax Tribunal judgment affirming corporate officer personal liability tax assessments against petitioner. We affirm. This case is being decided without oral argument pursuant to MCR 7.214(E).

“In the absence of fraud, review of a decision by the Tax Tribunal is limited to determining whether the tribunal erred in applying the law or adopted a wrong principle; its factual findings are conclusive if supported by competent, material, and substantial evidence on the whole record.” *Michigan Bell Telephone Co v Dep’t of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994).

MCL 205.27a(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, 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.]

Under MCL 205.27a(5), an officer can be held personally liable not only for the corporation’s unpaid taxes, but also for interest and penalties. *Elsheick v Dep’t of Treasury*, 225 Mich App 575, 577-578; 571 NW2d 570 (1997); *Keith v Dep’t of Treasury*, 165 Mich App 105, 108; 418 NW2d 691 (1987). But “personal tax liability will not attach to corporate officers who simply have significant involvement in the financial affairs of a corporation.” *Livingstone v Dep’t of*

Treasury, 434 Mich 771, 780; 456 NW2d 684 (1990). Rather, in order to be held personally liable, an officer's financial "involvement must be tax specific." *Id.*

Petitioner conceded that he was president of Ameristaff Nursing, Inc., the corporation that was liable for unpaid taxes. The evidence further established that petitioner signed Ameristaff tax returns, signed checks submitted in payment of taxes, and signed an installment agreement entered into with respondent. Thus, respondent established a prima facie case that petitioner was a corporate officer with tax-specific responsibilities, and could be held personally liable for Ameristaff's failure to pay its taxes.

In an effort to avoid personal liability, petitioner argues that the amounts owed by Ameristaff should be excused, reduced, or set off by amounts owed to Ameristaff by the state of Michigan. Petitioner asserts that because of the state's failure to pay these amounts owed, Ameristaff lacked the financial ability to pay its taxes and, therefore, he was unable to direct that the taxes be paid.

Issues concerning the interpretation of tax statutes are questions of law to be reviewed de novo. *Danse Corp v Madison Heights*, 466 Mich 175, 178; 644 NW2d 721 (2002). "[A] fundamental rule of statutory construction is to ascertain the purpose and intent of the Legislature in enacting the provision." *Farrington v Total Petroleum, Inc*, 442 Mich 201, 212; 501 NW2d 76 (1993). "When a statute is clear and unambiguous, judicial construction or interpretation is unnecessary and therefore, precluded." *Lorencz v Ford Motor Co*, 439 Mich 370, 376; 483 NW2d 844 (1992).

The language of MCL 205.27a(5) does not support petitioner's argument that the state's failure to timely pay amounts owed to Ameristaff may serve as a defense to petitioner's personal liability for the corporation's failure to pay taxes. Rather, the statute provides that personal liability may be imposed against an officer if "a corporation . . . fails *for any reason* to file the required returns or to pay the tax due" (emphasis added). Furthermore, to the extent that petitioner relies on equitable principles as a basis for urging an offset or reduction of his personal liability on account of amounts owed to Ameristaff by the state, his reliance is misplaced because the Tax Tribunal lacks equitable powers. *Kostyu v Dep't of Treasury*, 170 Mich App 123, 128; 427 NW2d 566 (1988).

Petitioner's reliance on *Holley v United States*, 89-1 USTC 9196 (ED Wis, 1989), is also misplaced. In *Holley*, the court refused to hold an officer of a charitable organization personally liable for the organization's unpaid taxes because it found that there was no wilful failure to pay taxes under 26 USC 6672(a). The organization provided child development services to inner city children, and the court found that its taxes were not paid because, as federal funding mechanisms became more complicated and cumbersome, the organization's clients became less willing and able to complete the required forms, resulting in a loss of funding and, eventually, the closing of centers. *Id.* But, as noted by the Tax Tribunal in this case, MCL 205.27a(5) does not require a showing of wilfulness in order to impose personal liability against an officer.

Additionally, a corporate officer's liability under MCL 205.27a(5) is strictly and solely derivative. See *Livingstone, supra* at 782-783; *Keith, supra* at 110-111. Therefore, the amounts owed must be challenged, if at all, by the corporation itself, within the appeal periods provided by MCL 205.22. *Keith, supra* at 109. Once the corporation's time to appeal has passed, an

officer subject to personal liability under MCL 205.27a(5) cannot contest the amount of the corporation's underlying tax liability. *Id.* at 109-111. Thus, even if Ameristaff's inability to pay could serve as a defense to the corporation—which it may not—petitioner could not raise it in his own defense.

For these reasons, we conclude that petitioner failed to rebut respondent's prima facie case of personal responsibility. Petitioner has failed to show that the Tax Tribunal committed an error of law, or that its factual findings are unsupported by competent, material, and substantial evidence on the whole record.

Affirmed.

/s/ Michael J. Talbot
/s/ William C. Whitbeck
/s/ Helene N. White