

**STATE OF MICHIGAN
DEPARTMENT OF LABOR AND ECONOMIC GROWTH
MICHIGAN TAX TRIBUNAL
DEFAULT HEARING**

Rawda Bazzi,
Petitioner,

MTT Docket No. 278628

v

Michigan Department of Treasury,
Respondent.

Tribunal Judge Presiding
Judith R. Trepeck

OPINION AND JUDGMENT

A default hearing was held in the above-captioned case on March 22, 2006, pursuant to TTR 247. In that regard, the Tribunal entered an Order of Default on May 20, 2005, placing Respondent in default for failing to file and exchange a prehearing statement as required by the Tribunal. The Tribunal required Respondent to cure the default within 21 days of the Order. Respondent failed to file a Motion to Set Aside Default by June 10, 2005. The Tribunal entered its Order scheduling a Default Hearing for March 22, 2006. Given Respondent's failure to cure the default as required by the Order of May 20, 2005, the Tribunal restricted Respondent to the information previously filed prior to the default. Petitioner was represented by Martin W. Bordoley, from Martin W. Bordoley, P.C. Respondent was represented by Joseph Yanoschik.

JUDGMENT SUMMARY

Based upon the evidence and testimony presented at the hearing the Tribunal has concluded that the assessment, A 120483 (Account Number TC-5501428), as set forth by Respondent shall be cancelled.

PETITIONER'S CONTENTIONS

Petitioner contends that the subject assessment, A 120483, for State of Michigan cigarette tax is erroneous and not valid.

RESPONDENT'S CONTENTIONS

Respondent contends that assessment A 120483 is due and owing based upon failure to file accurate returns and pay tobacco tax.

SUMMARY OF THE CASE

Petitioner contends that the subject assessment for State of Michigan cigarette tax is not due. Petitioner owned a company called Cigarette Express. This company did business with a certain New Jersey supplier one time. The related tax liability connected to that transaction was claimed to have been paid. No further tax for cigarettes was believed to be due. Respondent had information leading to the belief that Petitioner owed additional tax.

Petitioner was involved in a criminal case in Circuit Court. The charges against Petitioner in that case were dismissed. Petitioner believed, then, that the assessment which is the subject of this case was and should, consequently, be cancelled. Respondent believes that the tax as assessed remains due and owing.

EXHIBITS

Due to the fact that a prehearing was not held, a Prehearing Summary and Scheduling Order was not issued. At the default hearing, the Petitioner's representative appeared to be somewhat

unfamiliar with the rules and procedures of the Tribunal. He had in his possession and referred to a number of exhibits. The Tribunal was flexible in the conduct of the hearing due to this unfamiliarity and allowed the exhibits to be used and entered. However, Petitioner was ordered to deliver to the Tribunal, within seven days, two copies of all exhibits used at the default hearing. The order was complied with.

Petitioner's Exhibits:

1. Petitioner Company's Tobacco Products Tax License.
2. Petitioner Company's Application for a Tobacco Products Tax License.
3. Petitioner Company's certified Michigan Tobacco Products Tax Return for February 1999.
4. Petitioner Company's certified Michigan Tobacco Products Tax Return for March 1999.
5. Petitioner Company's certified Michigan Tobacco Products Tax Return for April 1999.
6. Petitioner Company's certified Michigan Tobacco Products Tax Return for May 1999.
7. Petitioner Company's certified Michigan Tobacco Products Tax Return for June 1999.
8. Petitioner Company's certified Michigan Tobacco Products Tax Return for July 1999.
9. Petitioner Company's certified Michigan Tobacco Products Tax Return for August 1999.
10. Petitioner Company's certified Michigan Tobacco Products Tax Return for September 1999.
11. Petitioner Company's certified Michigan Tobacco Products Tax Return for October 1999.
12. Petitioner Company's certified Michigan Tobacco Products Tax Return for November 1999.
13. Petitioner Company's certified Michigan Tobacco Products Tax Return for December 1999.
14. Petitioner Company's certified Michigan Tobacco Products Tax Return for November 1999. (duplicate of Exhibit 12)
15. "Order of Dismissal" Wayne County Circuit Court, 01-11310-FH, dated December 17, 2001.
16. "Motion to Quash" dated November 29, 2001.
17. Petitioner Company's certified Michigan Tobacco Products Tax Return for February 1999. (duplicate)
18. Transcript in the case of *The People of the State of Michigan v. Hassan A. Bazzi and Rawda Bazzi*, dated October 31, 2001.

TESTIMONY

Prior to testimony of Petitioner's witness, the Tribunal sought to clarify the assessment and liability with Respondent.

Q. Can you tell me that the assessment is, tax, interest and penalty?

A. As of today, no. But it is in excess of \$349,000...

Q. Do you believe this is a valid assessment?

A. Yes.

Q. Even in light of what happened in the other --...proceedings?

A. Yes...(TR, pp. 4-5))

Respondent was then asked to explain the premise upon which this assessment is based.

Respondent was asked again if the assessment at hand was valid. Respondent stated that Petitioner's brother is also liable but his name does not appear on the assessment. The prior attorney on this case left the department and Mr. Yanoschik did not appear to have full knowledge of the appeal. The amount of the assessment was not set forth. Respondent also did not have information as to whether Treasury is pursuing payment from Petitioner's brother. (TR, pp. 9-11, 15)

Mr. Bordoley then called the witness, Rawda Bazzi. The witness verified each of Petitioner's exhibits. Ms. Bazzi then stated that she filed returns for each month she was in business as Cigarette Express; that the returns accurately reflected purchase of cigarettes and a one time purchase of cigars from Governor's Express. She again stated that all returns properly reflect tobacco products purchases. Ms. Bazzi also stated that her brother pled guilty in the Circuit Court and received a sentence. Ms. Bazzi testified that she owes no taxes to the State of Michigan. (TR, pp. 17-22)

APPLICABLE LAW

Petitioner carries the burden to prove by a preponderance of the evidence that the assessment is in error. The Michigan Court of Appeals held in *Kostyu v Michigan Department of Treasury*, 170 Mich App 123 (1988):

[T]he Tax Tribunal has authority to allocate the burden of proof in a manner consistent with the legislative scheme. *Zenith Industrial Corp v Dep't of Treasury*, 130 Mich App 464 (1983). Although the revenue statute at issue here, M.C.L. § 205.21...does not state which party has the burden of proof, imposing the burden on the taxpayer is consistent with the overall scheme of the tax statutes and the Legislature's intent to give the Department a means of basing an assessment on the best information available to it under the circumstances. See also *Vomvolakis v Dep't of Treasury*, 145 Mich App 238 (1985), *lv den* 424 Mich. 887 (1986).

As to defaults, TTR 205.1247, Rule 247 states:

- (1) If a party has failed to plead, appear, or otherwise proceed as provided by these rules or as required by the tribunal, then the party may be held in default...on the initiative of the tribunal. A party placed in default shall cure the default as provided by the order placing the party in default and file a motion to set aside the default accompanied by the appropriate fee within 21 days of the entry of the order placing the party in default or as otherwise ordered by the tribunal. Failure to comply with an order of default may result in the dismissal of the case or the scheduling of a default hearing as provided in this rule.
- (2) For purposes of this rule, "default hearing" means a hearing at which the defaulted party is precluded from presenting any testimony or submitting any evidence not submitted to the tribunal before the entry of the order placing the party in default and may not, unless otherwise ordered by the tribunal, examine the other party's witnesses.

FINDINGS OF FACT AND APPLICATION OF APPLICABLE LAW

Petitioner, Rawda Bazzi, owned a company called Cigarette Express. During the course of conducting business, Petitioner purchased tobacco products from a New Jersey company named Governor's Cigars. Petitioner was assessed by the State of Michigan for failure to file accurate

returns and failure to pay cigarette tobacco tax. Petitioner was defendant in a criminal proceeding in Circuit Court, *The People of the State of Michigan v Hassan A. Bazzi and Rawda Bazzi*. (Wayne County Circuit Court, Docket Number 01-113110-FH) The criminal case against Rawda Bazzi, was dismissed. Petitioner then believed that the assessment in this appeal would be dismissed. Upon finding that it had not, Petitioner appealed to the Tribunal. In the process of this appeal, the Tribunal issued an order on May 20, 2005 finding Respondent to be in default, giving Respondent 21 days to cure the default. Respondent failed to do so. The appeal then proceeded to this default hearing without having had a prehearing.

Petitioner set forth its case based upon evidence of Michigan Department of Treasury, Tobacco Products Tax certified copies of Michigan Tobacco Products Tax Returns. Eleven such returns were submitted as exhibits. They covered February 1 through December 31, 1999. Petitioner indicated, under oath, that all taxes shown on the returns as due have been paid. According to Petitioner there is no outstanding tobacco products tax due. The Tribunal finds the testimony and evidence submitted by Petitioner to be credible and believable.

Respondent did not produce any exhibits indicating that the amount as stated to be "...in excess of \$349,000" is due and owing. (TR, p. 4) Respondent did not state the exact amount due, or provide a breakdown between tax, interest and penalty. Respondent, although given the opportunity, did not indicate any basis upon which the assessment was calculated or based.

CONCLUSION

Based upon the above findings of fact and the applicable law the Tribunal finds that Petitioner, based upon Michigan Department of Treasury's certified copies of tax returns filed for the period February 1 through December 31, 1999, does not appear to owe additional taxes as indicated in the assessment. Therefore, the Tribunal concludes that the assessment, A 120483 (Account Number TC-5501428), as set forth by Respondent shall be cancelled.

JUDGMENT

IT IS ORDERED that the Assessment A 120483, Account #TC-5501429 is hereby **CANCELLED**.

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

MICHIGAN TAX TRIBUNAL

Entered: April 10, 2006

By: Judith R. Trepeck