

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

Raymond E. Modad,  
Petitioner,

v

MTT Docket No. 379026

Michigan Department of Treasury,  
Respondent.

Tribunal Judge Presiding  
Cynthia J Knoll

ORDER AFFIRMING ASSESSMENT

FINAL JUDGMENT AND OPINION

INTRODUCTION

Petitioner, Raymond E. Modad, appeals Final Tax Assessment L605583 issued by Respondent, Michigan Department of Treasury, for Single Business Tax (“SBT”) of GGL, Inc., for the tax year ending December 31, 1998. The tax assessed was \$43,905 plus statutory interest. No penalty was assessed. A hearing was held on July 28, 2011. Petitioner contends that he is not liable for the taxes as a responsible corporate officer under MCL 205.27a(5), as Respondent claims, because he never had control of, supervision over, or responsibility for, the filing or payment of the taxes at issue. Respondent relies on prima facie evidence including SBT returns, registration for taxes and a stock sale agreement, all signed by Petitioner as president or owner. Petitioner has failed to rebut the presumption that he was the responsible corporate officer and the Tribunal affirms the assessment.

BACKGROUND

Petitioner performed accounting services through a company he owned called RAM Accounting. [Transcript pp. 46-47] In the early 1990’s, he began performing bookkeeping and accounting work approximately 2 days per month as an outside tax preparer and consultant for Craig Vanderburg and his companies, the Genesys Group of companies. [Transcript pp. 48 & 55] The group was engaged in business as Professional Employer Organizations (“PEO”), and functioned as an outsourcing payroll, human resources management provider, performing payroll administration, administering benefits, issuing payroll checks, preparing form 941s, and payroll tax returns for the clients. Genesys Group had approximately 25 clients representing approximately 5,000 employees. [See Transcript pp. 17-24] Petitioner referred new business to Mr. Vanderburg and the Genesys Group, receiving no compensation in return. [Transcript p. 53] In early 1997, Mr. Vanderburg offered Petitioner an opportunity to earn sales commissions and requested Petitioner to form an entity to be part of the Genesys Group with the promise of partial stock ownership. [Transcript pp. 53-54] Petitioner signed Articles of Incorporation dated January 1, 1997, as incorporator of GGL, Inc. (“GGL”, d.b.a. Genesys Interstate and also

referred to as TGG, Inc.). In August 1997, Mr. Vanderburg hired an in-house accountant, Robert McPhearson, and Petitioner was told his services were no longer needed. [Transcript p. 56] He did not return to the offices of the Genesys Group or GGL after August 1997, and he claims he did not perform any additional services on behalf of Mr. Vanderburg, the Genesys Group or GGL after that time. [See Transcript pp. 57-60] On October 2, 2007, Respondent issued Notice of Intent to Assess L605583 to Petitioner as “responsible party” (pursuant to MCL 205.27a(5)) liable for SBT due from GGL for the 1998 tax year. Petitioner requested and Respondent granted an informal conference with the Hearing Division, which was held on July 15, 2009. The Hearing Officer recommended that the Intent to Assess be upheld as originally issued and Respondent agreed, issuing its Decision and Order of Determination on July 21, 2009. The Final Assessment was issued on August 27, 2009. Petitioner filed this Appeal on September 28, 2009.

| Assessment | Period Ending | Tax         | Penalty | Interest*   |
|------------|---------------|-------------|---------|-------------|
| L605583    | 12/31/1998    | \$43,905.00 | \$0     | \$34,056.76 |

\*As of 08/27/2009, Interest continues to accrue in accordance with sections 23 and 24 of 1941 PA 122.

#### PETITIONER’S CONTENTIONS

Petitioner requests that the Tribunal determine that he is not liable for the subject assessment and cancel the assessment. In support of his contention, Petitioner argues that 1) he had absolutely no authority within GGL, 2) he had no access to books or records, 3) he did not hire or fire any employee, 4) he had no supervisory authority over any GGL employees, 5) he was not a signatory on any GGL bank account and had no authority with respect to the payment of any debts or expenses of GGL, and 6) he never signed a GGL check. Petitioner asserts that his only connection with GGL was that he referred some customers to GGL for which he was paid a fee in early 1997. [Petitioner’s Prehearing Statement]

Petitioner asserts that he was the titular president of GGL for a period of time in 1997, which Petitioner believes ended in August of that year, and that the title was meaningless because he held no position and had no authority. [Petitioner’s Answers to Interrogatories p. 2] Petitioner admits that he signed tax returns at the request of and as a personal favor to Mr. Vanderburg.

Petitioner offered the following eight (8) exhibits relating to GGL for admission and all exhibits were admitted without objection from Respondent:

- P-1 Certificate of Assumed Name
- P-2 1998 Annual Report
- P-3 1999 Annual Report
- P-4 2000 Annual Report
- P-5 1998 SBT Return
- P-6 SBT Amended Return for 1997
- P-7 Form 1120 – Federal Tax Return for 1998
- P-8 Form 1120 – Federal Tax Return for 1997

Petitioner offered two witnesses: Petitioner, Raymond Modad; and Vipa Thanyakran.

Petitioner, Raymond Modad testified that:

1. He began doing bookkeeping and accounting work for Mr. Vanderburg in the 1990's, as an outside tax preparer and consultant. [Transcript p. 48]
2. He was never an employee of GGL or any of Mr. Vanderburg's companies. [Transcript p. 49]
3. Mr. Vanderburg told him that he appreciated his sales efforts and that he deserved to be rewarded. Mr. Vanderburg started GGL and said he would run it, all Petitioner had to do was continue to bring in sales customers and he would earn sales commissions based on a percentage of the business he brought into GGL. Mr. Vanderburg was his friend and he trusted him. [Transcript pp. 53-54]
4. He signed the Articles of Incorporation of GGL, Inc., [Exhibit R-11] because he believed he would become a shareholder and be a part owner. [Transcript pp. 53 & 54]
5. He never received any stock and did not become a part owner of GGL. He never attended a shareholders', board of directors', or management meeting. [Transcript p. 54]
6. He received about \$20,000 sales commissions in the early part of 1997. [Transcript p. 55]
7. Prior to August 1997, he would go to the offices of Genesys Group and GGL one or two times per month to perform a payroll tax audit and review financial statements with Mr. Vanderburg. After August 1997, he was told that his accounting services were no longer needed and that was the last time he was physically in the office. [Transcript pp. 55-56]
8. He did nothing specifically for GGL in 1997. He did not negotiate with customers, he did not hire employees, he did not set anyone's compensation, no one from GGL reported to him. He did not have access to the books and records. He never wrote a check on behalf of the company nor did he believe he had the authority to write a check. He did not make any management decisions for the company. He did not bill customers or collect accounts receivable. He did not pay the workers' compensation, health insurance or employee taxes. [Transcript pp. 56-58]
9. The 1997 Federal Corporation Income Tax Return [Form 1120] was signed by Robert McPhearson. [Exhibit P-8.] [Transcript p. 60]
10. He received no money from the sale of GGL. He did not know that the company was sold when it was being sold. He did not participate in the sale of the company nor did he see the sale contracts. He was never asked to sign anything with regard to the sale. [Transcript p. 66]
11. In regard to the sale and the Agreement for Sale of Corporate Stock of TGG, Inc., because he was on the original incorporation papers, Mr. Vanderburg wanted something with Petitioner's signature to show that he had no interest in the company. Mr. Vanderburg had the Agreement prepared and when Petitioner read it, he felt that it was good for him to sign because it said that Mr. Vanderburg would assume all liabilities. "[S]o I did what Craig (Vanderburg) said and I signed the document because I felt that Craig was - - as my friend, was trying to protect me from any liabilities." [Transcript p. 74] "I never owned anything or signed anything for TGG. I only signed that document that Craig asked me to sign because it had something to do with the sale of the business to SES and I did not review the document." [Transcript p. 84]
12. He signed the 1998 Federal Corporation Income Tax Return [Exhibit R-7] because he "had seen notices on the 1997 liability and Craig (Vanderburg) told me that SES had

bought his company, that there was money sitting in reserve to pay any taxes that were owed, that he would take care of this matter. I wouldn't have to concern myself. He told me that in error, Plante Moran had still listed my name on the '98 return and he asked me . . . if I would sign the return." [Transcript p. 65]

13. He signed the 1998 Single Business Tax Return [Exhibit P-5] because Mr. Vanderburg "asked me to sign it because they still listed my name on there as an officer and he didn't want to get the return redone. There was no liability. As a matter of fact, there was a refund coming on the return. It was prepared by Plant Moran. Everything was correct, I didn't have anything to worry about and I signed the return." [Transcript p. 68]
14. He was not president of GGL but he did sign his name as president. [Transcript pp. 86-87] [See Exhibits R-3, 4, & 5]

Vipa Thanyakran testified that:

1. She worked for Genesys Group from 1992 until May 1998 as assistant to Craig Vanderburg, mostly in the accounting department, involved with the payroll for the clients. (Transcript pp. 17, 32)
2. She had authority to sign checks on behalf of some of the companies in the Genesys Group but she could not do so on her own; she needed to have permission from Mr. Vanderburg. (Transcript p. 18) She was removed from signatory authority when Mr. McPhearson was brought into the companies. (Transcript pp. 43, 44)
3. Mr. Modad performed bookkeeping services for Mr. Vanderburg's companies until 1997, when Rob McPhearson was hired to take care of all the accounting. (Transcript p. 21)
4. Mr. Modad's services were discontinued in 1997, and he never returned to the office. (Transcript p. 21)
5. She prepared a Certificate of Assumed Name for GGL, Inc., [Exhibit P-1] at the direction of Mr. Vanderburg. (Transcript p. 23)
6. She prepared Articles of Incorporation for GGL, Inc., [Exhibit R-11] at the direction of Mr. Vanderburg. (Transcript p. 23)
7. She did not receive direction from Petitioner about the preparation of either of these two documents nor did Petitioner say anything to her about the formation of the company. (Transcript p. 24)
8. Petitioner did not have the authority to direct people within the company. (Transcript p. 25) He did not have any duties with respect to GGL and he was not on the bank account [as an authorized signatory]. (Transcript p. 26) He did not have access to any financial information for GGL, Inc., or the other Genesys Group companies after Mr. McPhearson came in. (Transcript p. 28) He did not set compensation for any employees. *Id.*
9. She prepared the 1998 Corporation Information Update for GGL, Inc., [Exhibit P-2] at the direction of Mr. Vanderburg. (Transcript p. 29)
10. The signature on the 1999 Profit Corporation Information Update [Exhibit P-3] is that of Mr. Vanderburg. (Transcript p. 31)
11. She does not recognize the officer signature on 1997 US Corporation Income Tax Return. [Exhibit P-8] (Transcript p. 32)
12. For the 1997 and 1998 tax years, she considered Mr. Vanderburg and Mr. McPhearson to be officers of GGL, Inc. but not Petitioner. (Transcript p. 39)

### RESPONDENT'S CONTENTIONS

Respondent requests that the Tribunal affirm the assessment against Petitioner. Respondent contends that the statute is clear that because Petitioner signed GGL corporate returns at both the state level and the federal level, he is liable for Michigan corporate taxes. He also signed the Registration of Michigan Taxes as the corporate officer. Respondent contends that Petitioner cannot shift his liability and responsibility for taxes to a third party who was not listed as an officer and whose name did not appear as a corporate officer on corporate returns.

Respondent offered the following sixteen (16) exhibits for admission and all except R-14 were admitted without objection from Petitioner.

- R-1 Intent to Assess L605583, issued 10/02/07
- R-2 Final Assessment L605583, issued 08/27/2009
- R-3 1997 SBT Annual Return
- R-4 1997 SBT Amended Return
- R-5 1998 SBT Annual Return
- R-6 1997 US Corporation Income Tax Return, form 1120, Schedule E
- R-7 1998 US Corporation Income Tax Return, form 1120, Schedule E
- R-8 Single Business Tax Annual Return Notice of Adjustment to 1998 tax year, dated Feb 4, 2003
- R-9 Registration for Michigan Taxes
- R-10 1997 SBT, Schedule of Shareholders and Officers, listing Petitioner as an officer and 100% shareholder
- R-11 Articles of Incorporation
- R-12 1998 Corporation Information Update
- R-13 Agreement For the Sale of Corporate Stock between GGL, Inc. and MAV Futures, Inc.
- R-14 Letter from Raymond E. Modad to Department of Treasury's Hearing Division, dated June 16, 2011.
- R-15 Petitioner's Answers to Respondent's First Set of Interrogatories, and Request to Produce, dated May 11, 2011.
- R-16 Petitioner's Answers to Respondent's Second Request to Admit, Set of Interrogatories, and Requests to Produce, dated June 1, 2011.

Petitioner objected to R-14 because the letter allegedly sent by Petitioner to Respondent was not signed, therefore there is no proof Petitioner sent it. The Tribunal overruled Petitioner's objection because there is a fax number and indication that the fax was from RAM Tax & Accounting Inc. at the top of the document. Petitioner testified that he had an accounting service firm named RAM Accounting. [Transcript p. 47] The exhibit was admitted.

Angela Helm testified that:

1. She is employed by Respondent, Collections Division, and she made the determination that Petitioner should be held liable as corporate officer for the unpaid debt of the corporation in this case. [Transcript pp. 88-89]

2. Her determination was based on various documents Petitioner signed as President of the corporation. She relied on a letter sent by Petitioner (Exhibit R-14) in which Petitioner states he did sign the 1997 and 1998 SBT returns. He also was listed as the only officer and the other person was a shareholder, which is not an officer under the statute. [Transcript pp. 88-93]
3. She did not speak with anybody at the corporation to determine who actually controlled the company. [Transcript p. 95]

### FINDINGS OF FACT

The Tribunal finds the following facts:

1. GGL, Inc. was incorporated on April 4, 1997.
2. Petitioner was the incorporator and he signed the Articles of Incorporation dated January 1, 1997, and filed with the Michigan Department of Commerce on March 5, 1997. [Exhibit R-11]
3. Petitioner signed as President a Registration for Michigan taxes filed on behalf of TGG, Inc., d.b.a. Genesys Interstate. It was not dated. [Exhibit R-9]
4. On January 12, 1997, Vipa Thanyakarn signed as registered agent, the Certificate of Assumed Name for GGL, Inc., d.b.a. Genesys Interstate, which was filed on April 16, 1997. [Exhibit P-1]
5. On April 30, 1998, Petitioner signed as President a 1997 Single Business Tax Annual Return filed by Genesys Interstate, d.b.a. GGL, Inc. [Exhibit R-3]
6. On August 11, 1998, the 1998 Corporation Information update was filed, signed by Vipa Thanyakarn as registered agent and the name of officer appears “whited out.” [Exhibit P-2]
7. On September 18, 1998, a 1997 U.S. Corporation Income Tax Return was signed by someone other than Petitioner. [Exhibit p-8] Petitioner is listed on page 2 as an officer devoting 100% of his time to GGL and Craig Vanderburg is listed on page 5 as the 100% shareholder.
8. On December 20, 1998, Petitioner signed an Agreement for Sale of Corporate stock for the sale of TGG, Inc. [Exhibit R-13] The Agreement indicates that Petitioner was the 100% owner of TGG, Inc., and he sold 100% of the stock for \$1 to MAV Futures, Inc., signed by its president, Craig Vanderburg.
9. On October 12, 1999, Petitioner signed as President a 1998 Single Business Tax Annual Return filed by Genesys Interstate, d.b.a. GGL, Inc. [Exhibit R-5, P-5]
10. On October 12, 1999, Petitioner signed a 1998 U.S. Corporation Income Tax Return filed by Genesys Interstate, d.b.a. GGL, Inc. [Exhibit R-7, P-7] Petitioner is listed on page 2 as an officer devoting 100% of his time to GGL and Craig Vanderburg is listed on page 6 as the 100% shareholder.
11. On June 7, 2000, the 1999 Corporation Information update was filed, signed by Craig Vanderburg as President and Mr. Vanderburg is listed as President, Secretary, Treasurer, and Director. [Exhibit P-3]
12. On June 8, 2000, the 2000 Corporation Information update was filed, signed by Craig Vanderburg as President and Mr. Vanderburg is listed as President, Secretary, Treasurer, and Director. [Exhibit P-3]

13. On December 23, 2002, Petitioner signed as President, an amended 1997 Single Business Tax Annual Return filed by Genesys Interstate, d.b.a. GGL, Inc. [Exhibit R-4, P-6]
14. GGL, Inc. and TGG, Inc. used the same d.b.a. Genesys Interstate and the same federal employer identification number (“EIN”) and were one and the same corporation.

### CONCLUSIONS OF LAW

The issue is whether, under MCL 205.27, Petitioner is personally liable for GGL’s failure to file or pay the Single Business Tax returns for tax period 1998. The statute states 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 . . . 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...on returns or negotiable instruments submitted in payment of taxes is prima facie evidence of their responsibility for making the returns or payments.** MCL. 205.27a(5) (Emphasis Added)

For a person to be held liable for the corporation’s taxes it must be proven, based on Respondent’s audit or investigation, that he or she was an officer of the corporation during the period in question. In addition, liability will arise only if the officer (1) has control over the making of the corporation’s tax returns and payments of taxes; or (2) supervises the making of the corporation’s tax returns and payments of taxes; or (3) is charged with the responsibility for making the corporation’s returns and payments of taxes. *Keith v Department of Treasury*, 165 Mich 105; 418 NW2d 691 (1987). Personal liability will not attach unless the officer’s involvement in the financial affairs of a corporation is tax specific. *Livingstone v Department of Treasury*, 434 Mich 771, 780; 456 NW2d 684 (1990).

Although MCL 205.27a(5) provides that a corporate officer’s signature on either a return, or a negotiable instrument, is prima facie evidence of the officer’s responsibility to make returns, *Sobol v Michigan Dept of Treasury*, 9 MTT 321, May 19, 1995, the establishment of the prima facie case then creates a rebuttable presumption. Petitioner has the burden of proof of showing that he is not a corporate officer, or that he was a corporate officer without control over or responsibility for making returns or tax payments, i.e., that he did not have tax-related responsibility.

Thus, to hold a person personally liable for an entity’s tax liability, Respondent must first show that the person is an officer of the corporation. In this case, Respondent offered evidence in support of its argument that Petitioner was an officer. Specifically, Respondent relies on an undated Registration for Michigan Taxes [Exhibit R-9] signed by Petitioner as president, although the entity name on this document is TGG, Inc., not GGL. The Federal EIN has been redacted on Respondent’s Exhibit R-9; however, Respondent produced at hearing a non-redacted copy of the document that showed the EIN. The Tribunal confirmed that the Federal EIN appearing on the Registration for Michigan Taxes for TGG, Inc., signed by Petitioner, is the same number as used by GGL on the 1998 Federal Corporation Income Tax Return, also signed

by Petitioner. [Transcript pp. 85-86] Petitioner was unable to explain why two seemingly different incorporated entities were using the same EIN and assumed name, i.e., Genesys Interstate, other than to argue “[t]he problem is that this stuff is so old, I could not find answers. . . . Craig Vanderburg may have had so many companies that they were getting them confused as to who was what.” *Id.* Based on the testimony and evidence, the Tribunal finds that GGL, Inc. and TGG, Inc. are the same tax-paying entity.

In further support of its argument that Petitioner was an officer, Respondent offered Exhibits R-3 and 5, the 1997 and 1998 SBT returns filed by Genesys Interstate, d.b.a. GGL, Inc. signed by Petitioner as President on April 30, 1998 and October 12, 1999, respectively. It also submitted an amended 1997 SBT [Exhibit R-4] signed by Petitioner on December 23, 2002 and a U.S. Corporation Income Tax Return [Exhibit R-7] signed by Petitioner on October 12, 1999, both filed by Genesys Interstate, d.b.a. GGL, Inc. Respondent further relies on the Articles of Incorporation [Exhibit R-11] listing Petitioner as the incorporator, and a 1997 U.S. Corporation Income Tax Return [Exhibit R-6] listing Petitioner as an officer. Petitioner testified that he did sign his name as president. [Transcript p. 87] Based on the evidence and testimony, the Tribunal finds that Petitioner was, in fact, an officer of GGL, Inc.

Notwithstanding that Petitioner signed tax returns and other documents indicating he was president of GGL, the evidence must also support a conclusion that Petitioner was liable as a responsible corporate officer under MCL 205.27a(5). The prima facie case creates a rebuttable presumption and Petitioner has the burden of proof of showing that he did not have control over the making of the corporation’s tax returns and payment of taxes, did not supervise the making of the corporation’s tax returns and payment of taxes, and he was not charged with the responsibility for making the corporation’s returns and payment of taxes. The testimony supports a conclusion that Mr. Vanderburg handled the corporate finances with assistance from Mr. McPhearson; however, documentary evidence contradicts and far outweighs the testimony.

Petitioner testified that he had done business with Mr. Vanderburg for a number of years providing accounting and tax services, as well as referring new clients to Mr. Vanderburg. He also testified that he was friends with Mr. Vanderburg and trusted him. In 1997, Mr. Vanderburg offered Petitioner the opportunity to earn financial gain in return for the business referrals, promising stock ownership in a new corporation. Some time in March or April of 1997, Mr. Vanderburg directed his employee, Ms. Thanyakarn, to prepare Articles of Incorporation for an entity named GGL, Inc., naming Petitioner as incorporator. He also directed her to file a Certificate of Assumed Name (i.e., Genesys Interstate) and a Registration for Michigan Taxes in the name TGG, Inc. Petitioner testified that he had no involvement in the preparation of these documents and only signed them at the direction of Mr. Vanderburg. [Transcript p. 58] Petitioner testified that he did not receive stock and was not a shareholder in the entity. [Transcript p. 54] This statement is supported by the 1997 and 1998 Federal tax returns (Exhibits R-6 & 7), which list Mr. Vanderburg as 100% shareholder but conflicts with the Agreement for Sale of Corporate Stock (Exhibit R-13) signed by Petitioner as sole shareholder and seller.

Petitioner testified that prior to August 1997, he spent one or two days a month at the offices of Genesys Group, during which time he devoted himself to a number of different entities. This is



in stark contrast to the information provided on the Federal tax returns (Exhibits R-6 & 7), which show that Petitioner devoted 100% of his time to the company. He also testified that he did virtually nothing for this company. [Transcript p. 83] Yet Petitioner admits to having signed the Articles of Incorporation and various tax returns.

By August 1997, Petitioner was informed that his services were no longer needed by Mr. Vanderburg because the business had grown to a size where Petitioner did not have the capabilities to handle the work. [Transcript p. 55] Mr. Vanderburg hired Mr. McPhearson as in-house chief financial officer and engaged the CPA firm Plante Moran to prepare tax returns. Petitioner testified that he never returned to the office of GGL or that of Mr. Vanderburg's other businesses after August 1997. [Transcript p. 54] He testified that he had no business dealings with Mr. Vanderburg, and received no further commission or compensation. He also testified that he had no access to the books and records of GGL. [Transcript p. 57] This testimony is in direct conflict with documentary evidence. Petitioner signed the 1997 SBT return in April of 1998. For an unexplained reason, the Federal return was filed subsequently on September 15, 1998 and was signed by someone other than Petitioner. Petitioner admitted that he met with Mr. Vanderburg in 1999 [Transcript p. 65], which is supported by his signature on the 1998 Federal and SBT returns dated October 12, 1999. Petitioner also attempted to amend the 1997 return in 2002, and managed to obtain a copy of GGL's originally filed SBT.

Petitioner had further dealings with GGL. He testified that at some point he became aware that there was a 1997 SBT liability for the corporation. He stated:

I had seen notices on the 1997 liability and Craig (Vanderburg) told me that SES had bought his company, that there was money sitting in reserve to pay any taxes that were owed, that he would take care of this matter. I wouldn't have to concern myself. He told me that in error Plante Moran had still listed my name on the '98 return and he asked me - - because he didn't want to get the return done all over again, he asked me if I would sign the return. There was no liability on the return. The return was prepared by Plante Moran. I had no reason to believe that the return was prepared incorrectly, except having my name on there, of course, and I signed the return at Craig's request. (Transcript p. 65)

Petitioner testified that he had nothing to do with the preparation or provision of information reported but that he did sign the return. Petitioner stated that there was no liability and in fact there was a refund reported. He said Mr. Vanderburg told him he didn't have anything to worry about. [Transcript pp. 68 & 83] Mr. Vanderburg convinced Petitioner that there would be no tax issue with regard to GGL and that Petitioner's cooperation in signing the returns would be helpful. When asked if he had authority to sign the 1998 return, Petitioner stated that he did so at Craig Vanderburg's direction.

Petitioner was led to believe that Mr. Vanderburg was in the process of clearing the 1997 assessment or would otherwise assist Petitioner in resolving the problem. Petitioner testified that Mr. Vanderburg sold the businesses to SES and he told Petitioner that the 1997 liability would be taken care of by SES and that it would get rectified. [Transcript p. 59] Petitioner testified:

Craig told me that the 1997 liability that the State of Michigan was coming after me for, he would take care of the money and make sure that SES paid it. I had to trust Craig because Craig was the only person that I could hope to help me out of this situation. I couldn't go and hire attorneys to go after SES and Craig, I didn't have those kind of resources. So when Craig as my friend told me, Ray, do this; it's already done. It's already correct. You don't have to worry about it. I will take care of the '97 stuff. I did what he said. [Transcript p. 69]

Petitioner further testified that he never owned any stock in an entity called TGG, Inc. but that he did sign the Agreement for Sale of Corporate Stock when Mr. Vanderburg sold the group of companies to SES. Petitioner stated "... I never owned anything or signed anything for TGG. I only signed that document that Craig asked me to sign because it had something to do with the sale of the business to SES and I did not review the document. I didn't review a lot of things." [Transcript p. 84] In conflict to that statement, Petitioner testified that he did read the Agreement. He stated:

I was on the original incorporation papers, he wanted something with my signature to show that I had no interest in that company so he prepared this document. **When I read it, I kind of felt that this was good for me to sign because it said that Craig would assume all liabilities**, so I did what Craig said and I signed the document because I felt that Craig was - - as my friend, was trying to protect me from any liabilities. . . I just signed what he said. Craig asked me to sign the document. . . . I thought it was relevant to his sale to SES and I did what he said. [Transcript p. 74] (Emphasis added)

He further stated:

My agreement called for the Purchaser of the Stock of TGG, Inc. to assume all liabilities including all tax liabilities. I have no records in my possession on that company . . . I was not at TGG, Inc. from September 1997 [until] the stock was sold. My duties were taken over by Robert McPhearson. It was at his direction that the 1997 SBT return was prepared. Since the paper work was not completed I did sign the 1997 SBT return. . . .[S]ince my contract called for the Purchaser to assume all liabilities I signed the 1998 SBT return. The actual Sale of the Stock was complete in December of 1998. *Id.*

In December 2002, Petitioner attempted to amend the 1997 SBT. Petitioner testified that he did so to show that he did not work 100% of his time at GGL. He also wanted the return to correctly show that Mr. Vanderburg owned 100% of the stock, that there were sales made outside Michigan and to eliminate intercompany sales. [Transcript p. 71] The amended return was rejected by Respondent as being filed outside the statute of limitations. Petitioner testified that in retrospect, he did not have the authority to amend the return. He stated "I should not have did (sic) the amended return. I should not have signed these other tax returns. . . but it doesn't discount from the fact that I had nothing to do with the running of this company. I never had control of any sort." [Transcript p. 82]

The Tribunal notes that the statutory presumption is not arbitrary. An officer's signature on a return indicates that he had final authority over the return and/or that he had control or supervision of preparation of the return and the payment of taxes. Petitioner's testimony and the testimony of his witness raise some question as to the level of his involvement with GGL. The documentary evidence, however, far outweighs testimony which the Tribunal notes is filled with numerous inconsistencies and contradictions. Having considered all of the facts presented, the Tribunal finds Petitioner was a responsible corporate officer and affirms the assessment.

#### JUDGMENT

IT IS ORDERED that Assessment No L605583 is AFFIRMED.

IT IS FURTHER ORDERED that the officer charged with collecting the affected taxes, interest, and penalties shall collect the taxes and interest as required by this Order within 28 days of the entry of this Final Opinion and Judgment.

This Final Opinion and Judgment resolves all pending claims in this matter and closes this case.

MICHIGAN TAX TRIBUNAL

Entered: October 17, 2011

By: Cynthia J Knoll