

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

Michael Regester,
Petitioner,

MTT Docket No. 379034

v

Michigan Department of Treasury,
Respondent.

Tribunal Judge Presiding
Steven H. Lasher

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Michael Regester, appeals tax assessments issued by Respondent, Michigan Department of Treasury. Petitioner contends that he is not liable for the taxes as a responsible corporate officer as Respondent claims, because he was not in a position of authority responsible for making the applicable tax returns or payments. Petitioner believes that he should not be held liable as a responsible officer under MCL 205.27a(5) because, although a corporate officer of Assured Source, Inc. during the period January 2006 through April 2007, he never had control of, supervision over, or responsibility for, the filing or payment of the taxes at issue. The Tribunal agrees with Petitioner that he is not a responsible officer pursuant to MCL 205.27a(5) and therefore cancels the assessments issued to Petitioner.

BACKGROUND

Petitioner was Vice-President of Assured Source, Inc. during the period January 2006 through April 2007. Assured Source, Inc. was in the business of payroll processing. (Transcript, p. 37). Sometime during the period after Assured Source, Inc. was formed, the five limited liability companies, each wholly owned by Assured Source, Inc., were formed on the advice of

counsel. (Transcript, p. 57). Each of the limited liability companies were formed for the purpose of payroll processing. Primarily because of the inability of Assured Source, Inc. (and the five limited liability companies) to collect accounts receivable, the companies failed to pay certain State of Michigan tax liabilities. (Transcript, p. 53). On October 7, 2007, Respondent issued forty-four (44) Final Bill For Taxes Due (Final Assessments) to Petitioner as a “responsible party” (pursuant to MCL 205.27a(5)) liable for withholding taxes due from Assured Source PEO LLC, Assured Source PEO2 LLC, Assured Source PEO3 LLC, Assured Source PEO4 LLC, and Assured Source PEO5 LLC. (A summary of the assessments issued against Petitioner is attached as Exhibit I). The taxable periods covered by these assessments included each of the twelve (12) months of 2007. Petitioner filed his appeal of these assessments to the Michigan Tax Tribunal on November 9, 2009. Respondent filed its answer to Petitioner’s appeal on December 1, 2009. A hearing was held on April 20, 2011, at which Petitioner presented three (3) witnesses. Respondent did not present any witnesses at the hearing.

PETITIONER’S CONTENTIONS

Petitioner requests that the Tribunal determine that he is not liable for the aforementioned assessments and cancel the assessments. In support of his contention, Petitioner argues that 1) the five Professional Employer Organizations (PEO’s) identified in the assessments issued against Petitioner were all limited liability companies owned by Assured Source, Inc., 2) Petitioner was employed by Assured Source, Inc. from January 2006 through April 24, 2007¹, 3) Petitioner signed signature cards and checking account signature cards for the Assured Source,

¹ Petitioner testified that his last day of employment with Assured Source, Inc. was April 25, 2007 (Transcript, p. 15)

Inc. account, 4) Petitioner does not recall signing signature cards for the five limited liability companies owned by Assured Source, Inc., 5) Petitioner did not authorize his signature stamp to be used on any tax returns filed, or checks written, by any of the five limited liability companies, and 6) Petitioner's duties with Assured Source, Inc. were limited to "trying to obtain investor money for Assured Source, Inc." and Petitioner "never had any operational duties and was only here in Michigan about ten days in 2006 and three or four or five days in 2007." (Transcript, p. 4, 5).

Petitioner offered the following fourteen (14) exhibits for admission and all exhibits were admitted without objection from Respondent:

- P-1 Corporate filings for Assured Source, Inc.
- P-2 Articles of Organization for Assured Source PEO 5, LLC
- P-3 Articles of Organization for Assured Source PEO 4, LLC
- P-4 Articles of Organization for Assured Source PEO 3, LLC
- P-5 Articles of Organization for Assured Source PEO 2, LLC
- P-6 Corporate filings for Assured Source PEO, LLC
- P-7 Correspondence dated September 2, 2009 from Cheryl Brown, Comptroller, Assured Source, Inc.
- P-8 Michael Regester's business card from Assured Source
- P-9 Michael Regester payroll information
- P-10 E-mail correspondence between KeyBank, Cheryl Brown and Michael Regester regarding check signing authorization
- P-11 Michael Regester travel records
- P-12 2006 Federal Income Tax Return for Michael Regester and Susan Regester

P-13 2007 Federal Income Tax Return for Michael Register and Susan Register

P-14 E-mail correspondence regarding Michigan tax liability

Petitioner offered three witnesses: Petitioner, Michael Register; James D'Iorio, and Cheryl Brown.

Petitioner, Michael Register testified that:

1. He was hired by Jim D'Iorio as an employee of Assured Source, Inc. effective January 1, 2006, with the "sole duties" to raise "capital and finding debt sources, neither of which I was successful in at that time." (Transcript, p. 12). Petitioner was not hired to "recruit investors for the LLC's." (Transcript, p. 29).
2. He believed he had an ownership interest in Assured Source, Inc., but was never given a stock certificate. (Transcript, p. 23)
3. He never had an ownership interest in the five subject limited liability companies (Assured Source PEO, Assured Source PEO2, Assured Source PEO3, Assured Source PEO4, and Assured Source PEO5.) (Transcript, p. 23).
4. He was terminated from his employment with Assured Source, Inc. as of April 25, 2007. (Transcript, p. 12, 15).
5. He was "called a vice-president for one reason and one reason only, and that was so I could hand an Assured Source document to someone I was meeting in the hope of raising capital on debt. I had no day-to-day business with the company." He was never the Treasurer for Assured Source, Inc. (Transcript, p. 13, 23).
6. During 2006 and 2007, he was actually in Michigan a total of "between ten

and 15 days,” and did not have an office at the Assured Source, Inc. location. (Transcript, pp. 13, 20).

7. During his employment with Assured Source, Inc., he had no authority to hire people, fire them, or supervise any other employee. (Transcript, p. 17).
8. During his employment with Assured Source, Inc., he had nothing to do with the operations of the company and had nothing “to do with the preparation of tax returns.” Further, Petitioner did not sign any tax returns “in person,” nor did he prepare tax returns or supervise the preparation of them. (Transcript, p. 18).
9. Acknowledging that his signature appears on certain tax returns (Respondent Exhibit 3), Petitioner explained that “[t]he company (Assured Source, Inc.) had a signature stamp, which was requested by Key Bank who were the banker. My understanding that I was an alternate signature and I gave a stamp, a rubber stamp, not a computerized one at all, to fulfill what Key Bank requested,” for the purpose of providing a second signature on checks. Petitioner believed that the signature stamp was limited to use for Assured Source, Inc. (Transcript, pp. 18, 19, 25, 26, 30).
10. Petitioner assumed any use of his signature stamp would cease when his employment with Assured Source, Inc. was terminated. Petitioner was not informed as to potential uses for the signature stamp. (Transcript, p. 28).
11. He did not authorize his signature to be used on tax returns, nor did he have knowledge that his signature appeared on tax returns. (Transcript, p. 19).
12. He was not aware that his signature appeared on checks written on accounts

for any of the five limited liability companies and he held no position with any of the LLC's. (Transcript, pp. 20, 21).

13. He never ordered a check to be issued and never actually signed a check.

(Transcript, p. 22).

14. His handwriting does not appear on the fourth page of Respondent's Exhibit

3, Annual Return for Sales, Use and Withholding for Assured Source PEO for 2007. (Transcript, p. 62).

Cheryl Brown testified that:

1. She began working as a full-time employee of Assured Source, Inc. during "2004 or 2005," worked for the company during 2006, 2007, and 2008, and was the Controller of Assured Source, Inc. (Transcript, p. 33). Her supervisor was Mr. D'Iorio. (Transcript p. 39).
2. She was not an officer of Assured Source, Inc. (Transcript, p. 33).
3. Petitioner Michael Regester came into the Assured Source, Inc. offices in Michigan "less than ten" times during 2006. (Transcript, p. 34).
4. Petitioner Michael Regester did not exercise any supervisory activities, did not review tax returns, and had nothing "to do with taxes." (Transcript, p. 35).
5. Petitioner Michael Regester's signature may have appeared on one or more tax returns because "there was a system that we had in place . . . that has the signature stamp that automatically would print out documents for the returns with the signatures that were within the system. If they were on checks, things of that nature, it would pull the same signature if they were on the checks." That is "how Mr. Regester's signature would have gotten on any of

the returns that were filed.” (Transcript, pp. 35, 36).

6. Similarly, Mr. Regester’s signature on a check was “an electronic signature stamp. With the amount of value that and documentation that comes through the system, the signature stamp placed into the system is what makes sense because there were just hundreds and thousands of documents weekly, so this was also electronically loaded for it to be processed.” (Transcript, pp. 36, 37).
Mr. Regester did not have the ability to approve checks. (Transcript, p. 38).
7. Mr. Regester did not have access to the checkbook or blank checks.
(Transcript, p. 38).
8. Mr. Regester did not “have any input into deciding which creditor should be paid from available funds.” (Transcript, p. 39).

James D’Iorio testified that:

1. He was President of Assured Source, Inc. (Transcript, p. 49).
2. Mr. Regester was an employee of Assured Source, Inc. from November or December, 2005 through April or May, 2007. (Transcript, p. 49).
3. Mr. Regester’s employment at Assured Source, Inc. was terminated because his main task was to raise capital and it was not accomplished. He did not have anything to do with the day-to-day operations of Assured Source, Inc., did not have anything to do with tax returns, and did not exercise any supervisory activities for Assured Source, Inc. (Transcript, pp. 49, 50, 52).
4. Mr. Regester’s signature appeared on certain tax returns because the “system” was set up to pull his signature. (Transcript, p. 50).
5. Mr. Regester was a vice-president of Assured Source, Inc., but was never a

treasurer. (Transcript pp. 51, 52).

6. Mr. Regester was made a signatory to the Assured Source, Inc. bank account as a vice-president of the company. (Transcript p. 55).
7. Mr. Regester was not a member of any of the five (5) LLC's. (Transcript, p. 57).

RESPONDENT'S CONTENTIONS

Respondent requests that the Tribunal affirm the assessments against Petitioner.

Admitting that the assessments in dispute "were not issued to Petitioner as a responsible officer of Assured Source, Inc." (Answer to Petition, p. 2), Respondent contends that Petitioner was "responsible for filing or paying taxes" of the five limited liability companies formed by Assured Source, Inc. (Answer to Petition, p. 3). Respondent did not offer an opening or closing statement and did not present any witnesses.

Respondent offered the following twenty-one (21) exhibits for admission and all exhibits were admitted without objection from Petitioner.

- R-1 Decision and Order of Determination dated August 19, 2009 related to Assured Source PEO.
- R-2 Final Assessments related to Assured Source PEO LLC. (P576250, P731222, P152359, P289166, P367367, P457206, P654542).
- R-3 Annual SUW return for Assured Source PEO for tax years 2006 and 2007.
- R-4 Check #1254 drawn on Assured Source PEO's Key Bank account payable to Michigan Department of Treasury.

- R-5 Combined Return for Michigan Taxes for Assured Source PEO for tax periods January 2007, March 2007 through September 2007, November and December 2007.
- R-6 Decision and Order of Determination dated August 19, 2009 related to Assured Source PEO2 LLC.
- R-7 Final Assessments related to Assured Source PEO 2 LLC (P571271, P389109, P389110, P389111, P389112, P451060, P654330, P808781, P725468, P921134, P244245).
- R-8 Annual SUW Return for Assured Source PEO 2, LLC for 2007 tax year.
- R-9 Combined Return for Michigan Taxes for Assured Source PEO 2 for January 2007 reflecting the signature of Petitioner and Check #184 drawn on Assured Source LLC PEO 2 for "SIT Jan 2007" dated March 22, 2007 payable to Respondent and reflecting signature of Petitioner.
- R-10 Electronic Funds Transfer Debit Application for Assured Source PEO 2, LLC.
- R-11 Decision and Order of Determination dated August 19, 2009 related to Assured Source PEO 3, LLC.
- R-12 Final Assessments related to Assured Source PEO 3 LLC (P606764, P606765, P606766, P606767, P606768, P606769, P606770, P659450, P866154, P866155).
- R-13 Annual Return for Sales, Use and Withholding Taxes for Assured Source PEO 3, LLC for 2007 tax year.
- R-14 Decision and Order of Determination dated August 19, 2009 related to Assured Source PEO 4, LLC.

- R-15 Final Assessments related to Assured Source PEO 4, LLC (P182847, P389113, P389114, P389115, P389116, P461687, P576116, P659451).
- R-16 Annual Return for Sales, Use and Withholding Taxes for Assured Source PEO 4, LLC for 2007 tax year.
- R-17 Combined Returns for Michigan Taxes for Assured Source PEO 4 for January 2007 reflecting the signature of Petitioner dated “3/22”, for April 2007, May 2007, June 2007, August 2007 and September 2007 reflecting the signature of Petitioner, for July 20, 2007, for July 2007 reflecting the signature of Petitioner as “Tax Manager” and dated “8/3”, and for November 2007 and December 2007 reflecting the signature of Petitioner as “Officer” and dated February 20, 2008, and Check #122 drawn on Assured Source LLC PEO 4 for “SIT Jan 07” dated March 22, 2007 payable to Respondent and reflecting the signature of Petitioner.
- R-18 Decision and Order of Determination dated August 19, 2009 related to Assured Source PEO 5, LLC.
- R-19 Annual Return for Sales, Use and Withholding Taxes for Assured Source PEO 5, LLC for 2007 tax year.
- R-20 Final Assessments related to Assured Source PEO 5, LLC (P335272, P392517, P530463, P530464, P530465, P530466, P571272, P654331).
- R-21 Combined Return for Michigan Taxes for Assured Source PEO 5 for January 2007 reflecting the signature of Petitioner and dated February 20, 2007, Combined Return for Michigan Taxes for Assured Source PEO 5 for March 2007 reflecting the signature of Petitioner and dated April 16, 2007, Combined Returns for Michigan Taxes for Assured Source PEO 5 for April 2007, May 2007, June

2007, August 2007, and September 2007 reflecting the signature of Petitioner, Combined Return for Michigan Taxes for Assured Source PEO 5 for July 2007 reflecting the signature of Petitioner and dated August 3, 2007, and Combined Returns for Michigan Taxes for Assured Source PEO 5 for November 2007 and December 2007 reflecting the signature of Petitioner and dated February 20, 2008, and check #128 drawn on Assured Source, LLC PEO 4 for “SIT MI Jan 2007” dated March 22, 2007 payable to Respondent and reflecting the signature of Petitioner.

FINDINGS OF FACT

1. Assured Source, Inc. was incorporated in Delaware on September 13, 2005.
2. Assured Source, Inc. was certified to transact business in Michigan on February 7, 2006.
3. The 2007 Foreign Corporation Information Update signed by James D’Iorio and dated April 5, 2007, lists James D’Iorio as President, Michael Register as Treasurer, and Mark Schmidt as Vice-President.
4. Petitioner was never the Treasurer of Assured Source, Inc., but was the Vice-President of Assured Source, Inc. from January 1, 2006 through April 25, 2007.
5. Assured Source PEO, LLC was organized in Delaware on October 7, 2005 by James D’Iorio, and was authorized to conduct business in Michigan on February 7, 2006. Mr. D’Iorio was identified as President of Assured Source PEO, LLC in corporate filings in Michigan dated December 1, 2006 for the 2007 calendar year, and was identified as President/CEO of the company on similar corporate filings for the 2008, 2009 and 2010 calendar years.
6. Articles of Organization were filed in Michigan on November 28, 2006 for Assured

Source PEO 2, LLC, Assured Source PEO 3, LLC, and Assured Source PEO 4, LLC, and were filed on November 30, 2006 for Assured Source PEO 5, LLC.

7. Petitioner was never a member, manager or officer of Assured Source PEO, LLC, Assured Source PEO 2, LLC, Assured Source PEO 3, LLC, Assured Source PEO 4, LLC or Assured Source PEO 5, LLC.
8. Petitioner provided his signature for a signature stamp, which was requested by the bank utilized by Assured Source, Inc. for the purpose of providing a second signature on checks.
9. Petitioner was not informed as to potential uses for the signature stamp, he did not authorize his signature to be used on tax returns, nor did he have knowledge that his signature appeared on tax returns.
10. Petitioner was not aware that his signature appeared on checks written on accounts for any of the five limited liability companies.
11. Petitioner never ordered a check to be issued and never actually signed a check.
12. Forty-four (44) assessments were issued to Petitioner as a “responsible officer” of each of the limited liability companies pursuant to MCL 205.27a(5). (See Exhibit I).
13. No assessments were issued to Petitioner as a “responsible officer” of Assured Source, Inc.
14. The Annual Return for Sales, Use and Withholding Taxes filed by Assured Source PEO for the 2006 tax year and received by Respondent on February 21, 2008, displays the signature of Petitioner, with no other information reflected, such as date or title.
15. The Annual Return for Sales, Use and Withholding Taxes filed by Assured Source PEO, LLC for the 2007 tax year displays the signature of Petitioner as “Officer” and is dated

February 18, 2008. The printed information in the signature block is not Petitioner's printing. (Transcript, p. 62, 63)

16. Check number 1254 was issued by Assured Source PEO, LLC to the Michigan Department of Treasury for "SIT Jan 2007," was dated March 22, 2007, and reflects the signature of Petitioner.
17. Combined Returns for Michigan Taxes for Assured Source PEO for tax periods January 2007, March 2007, April 2007, May 2007, June 2007 and August 2007 reflect the signature of Petitioner. Combined Return for Michigan Taxes for Assured Source PEO for tax period July 2007 reflects the signature of Petitioner as "Tax Manager." Combined Returns for Michigan Taxes for Assured Source PEO for tax periods November 2007 and December 2007 reflect the signature of Petitioner as "Officer."
18. The Annual Return for Sales, Use and Withholding Taxes filed by Assured Source PEO 2, LLC for the 2007 tax year dated February 18, 2008, reflects the signature of Petitioner as "Officer."
19. Combined Return for Michigan Taxes for Assured Source PEO 2 for tax period January 2007 reflects the signature of Petitioner.
20. Check #184 drawn on Key Bank issued by Assured Source, LLC PEO 2 payable to Respondent for "SIT Jan 2007" was dated March 22, 2007, and reflects the signature of Petitioner.
21. An Electronic Funds Transfer Debit Application dated February 20, 2008, reflects the signature of Petitioner as "Officer."
22. The Annual Return for Sales, Use and Withholding Taxes for the 2007 tax year filed by Assured Source PEO 3, LLC dated February 18, 2008, reflects the signature of Petitioner

as “Officer.”

23. The Annual Return for Sales, Use and Withholding Taxes for the 2007 tax year filed by Assured Source PEO 4, LLC dated February 18, 2008, reflects the signature of Petitioner as “Officer.”
24. Combined Return for Michigan Taxes for Assured Source PEO 4 for tax period January 2007 reflects the signature of Petitioner.
25. Combined Returns for Michigan Taxes for Assured Source PEO 4 for tax periods April 2007, May 2007, June 2007, August 2007, September 2007 reflect the signature of Petitioner.
26. Combined Return for Michigan Taxes for Assured Source PEO 4 for tax period July 2007 reflects the signature of Petitioner and is dated “8/3.”
27. Combined Returns for Michigan Taxes for Assured Source PEO 4 for tax periods November 2007 and December 2007 reflect the signature of Petitioner as “Officer” and are dated February 20, 2008.
28. Check #122 drawn on Key Bank issued by Assured Source, LLC PEO 4 payable to Respondent for “SIT Jan 2007” was dated March 22, 2007, and reflects the signature of Petitioner.
29. The Annual Return for Sales, Use and Withholding Taxes for the 2007 tax year filed by Assured Source PEO 5, LLC reflects the signature of Petitioner and is dated February 18, 2008.
30. Combined Return for Michigan Taxes for Assured Source PEO 5 for tax period January 2007 dated “3/22” reflects the signature of Petitioner.
31. Combined Return for Michigan Taxes for Assured Source PEO 5 for tax period March

2007 dated April 16, 2007 reflects the signature of Petitioner.

32. Combined Returns for Michigan Taxes for Assured Source PEO 5 for tax periods April 2007, May 2007, June 2007, August 2007 and September 2007 are undated and reflect the signature of Petitioner.

33. Combined Return for Michigan Taxes for Assured Source PEO 5 for tax period July 2007 dated August 3, 2007, reflects the signature of Petitioner as “Tax Manager.”

34. Combined Returns for Michigan Taxes for November 2007 and December 2007 dated February 20, 2008, reflect the signature of Petitioner as “Officer.”

35. Check #128 drawn on Key Bank issued by Assured Source, LLC PEO 5 payable to Respondent for “SIT MI Jan 2007” was dated March 22, 2007, and reflects the signature of Petitioner.

CONCLUSIONS OF LAW

Michigan's corporate officer liability statute, MCL 205.27a, states in subsection (5):

If a corporation, limited liability company, limited liability partnership, partnership, or limited partnership 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. The dissolution of a corporation, limited liability company, limited liability partnership, partnership, or limited partnership does not discharge an officer's, member's, manager's, or partner's liability for a prior failure of the corporation, limited liability company, limited liability partnership, partnership, or limited partnership to make a return or remit the tax due. The sum due for a liability may be assessed and collected under the related sections of this act.

The Michigan Supreme Court in *Livingstone v Department of Treasury*, 434 Mich 771, 783-784; 456 NW2d 684 (1990), set forth the following standard for imposing personal liability upon

corporate officers:

In order to hold a person personally liable for a corporation's tax liability, the Department of Treasury must first show that the person is an officer of the corporation. Then it must show either (1) that this officer has control over the making of the corporation's tax returns and payments of taxes; or (2) that this officer supervises the making of the corporation's tax returns and payments of taxes; or (3) that this officer is charged with the responsibility for making the corporation's returns and payments of taxes to the state.²

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 (or, after the effective date of Public Act 23 of 2003, the officer, member, manager or partner of a limited liability company, limited liability partnership, partnership or limited partnership). Here, although the testimony and exhibits confirm that Petitioner was an officer of Assured Source, Inc., the assessments issued to Petitioner were not issued to Petitioner in his capacity as an officer of Assured Source, Inc. Instead, all of the forty-four (44) assessments issued to Petitioner were issued to Petitioner as a "responsible officer" of each of the five limited liability companies. To support these

² MCL 205.27(a)(5) was revised by the Michigan legislature in 2003 to update the statute to expand the "corporate officer liability" statute to include members, managers, or partners of new forms of business entities, such as limited liability partnerships and limited liability companies. (Michigan House Fiscal Agency Legislative Analysis, July 10, 2003). Therefore, the term "officer" as used in this Opinion will include members or managers of limited liability companies.

assessments, Respondent has presented many tax returns and a few checks purportedly signed by Petitioner, some of which identify Petitioner as an “Officer” of a specific limited liability company. Specifically, Respondent has entered into evidence a total of twelve (12) documents reflecting the signature of Petitioner for Assured Source PEO, LLC, four (4) documents reflecting the signature of Petitioner for Assured Source PEO 2, LLC, one (1) document reflecting the signature of Petitioner for Assured Source PEO 3, LLC, eleven (11) documents reflecting the signature of Petitioner for Assured Source PEO 4, LLC, and twelve (12) documents reflecting the signature of Petitioner for Assured Source PEO 5, LLC. Of these forty (40) documents entered into evidence by Respondent, none of these documents identify Petitioner as a member or manager of any of the limited liability companies, only nine (9) identify Petitioner as an “Officer” and one identifies Petitioner as “Tax Manager.” Further, of the forty (40) documents offered by Respondent, only ten (10) of those documents either relate to a period during which Petitioner was employed by Assured Source, Inc. or were “signed” during the period of Petitioner’s employment with Assured Source, Inc. Given that Petitioner and Mr. D’Iorio have testified that Petitioner was not a member, manager or officer of any of the five limited liability companies (Transcript, pp. 23 and 57) and in light of the minimal evidence presented by Respondent supporting its contention that Petitioner was an “officer” of each of the five limited liability companies, the Tribunal finds that Respondent has failed to show that Petitioner was an “officer” of any of the five limited liability companies associated with the 44 assessments issued to Petitioner.

However, even if the evidence provided by the parties in this matter were somehow viewed to support Respondent's contention that Petitioner was an "officer" of each of the five limited liability companies, the Tribunal finds that Respondent has failed to prove that Petitioner (1) had control over the making of the corporation's tax returns and payments of taxes; or (2) that Petitioner supervised the making of the corporation's tax returns and payments of taxes; or (3) that Petitioner was charged with the responsibility for making the corporation's returns and payments of taxes to the state. (*Livingstone, supra*). Although Respondent has presented several documents reflecting what is purported to be Petitioner's signature, the Tribunal finds it difficult to conclude that this evidence establishes the prima facie case required by MCL 205.27a(5). Clearly, the testimony of Petitioner's witnesses establishes that Petitioner's signature on the aforementioned documents was a result of the application of a stamp or electronic facsimile. Further, even a cursory review of Petitioner's signature on these documents suggests that each of the signatures is identical. Here, Petitioner has satisfied 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. All of the testimony presented supports Petitioner's contention that he was employed by Assured Source, Inc. (and not by any of the five limited liability companies associated with the assessments against Petitioner) as an officer charged with the single responsibility of raising capital for the company, that he had no responsibility for, or control over, the filing or payment of taxes of either Assured Source, Inc. or any of the five limited liability companies, and that his signature appearing on the documents entered into evidence by Respondent was not an original signature, was used without his knowledge or permission, and was used after his employment with Assured Source, Inc. was terminated. After a careful review of all of the testimony and evidence

presented by the parties, the Tribunal finds that such testimony and evidence overwhelmingly supports Petitioner's contention that he is not a "responsible officer" under MCL 205.27a(5) and is not liable for any of the assessments issued to him.

JUDGMENT

IT IS ORDERED that Respondent's Final Assessments (See Exhibit 1), issued October 7, 2009, are CANCELLED.

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

MICHIGAN TAX TRIBUNAL

Entered: June 22, 2011

By: Steven H. Lasher

EXHIBIT I

ASSESSMENTS ISSUED AGAINST PETITIONER ON OCTOBER 7, 2009*

Company	Assessment No.	Tax Period	Tax Due	Penalty
Assured Source PEO, LLC	P152359	3/07	\$194.54	\$0.00
Assured Source PEO, LLC	P289166	4/07	\$2,740.91	\$685.23
Assured Source PEO, LLC	P367367	5/07	\$4,338.85	\$1,084.71
Assured Source PEO, LLC	P457206	6/07	\$6,771.42	\$1,692.85
Assured Source PEO, LLC	P576250	7/07	\$3,165.88	\$791.46
Assured Source PEO, LLC	P654542	8/07	\$7,375.46	\$1,843.87
Assured Source PEO, LLC	P731222	9/07	\$0.00	\$0.00
Assured Source PEO 2, LLC	P244245	1/07	\$0.00	\$582.66
Assured Source PEO 2, LLC	P389109	2/07	\$9,611.62	\$2,402.90
Assured Source PEO 2, LLC	P389110	3/07	\$9,211.87	\$2,302.96
Assured Source PEO 2, LLC	P389111	4/07	\$8,392.03	\$2,098.00
Assured Source PEO 2, LLC	P389112	5/07	\$7,712.22	\$1,928.05
Assured Source PEO 2, LLC	P451060	6/07	\$9,594.95	\$2,398.74
Assured Source PEO 2, LLC	P571271	7/07	\$6,946.44	\$1,736.61
Assured Source PEO 2, LLC	P654330	8/07	\$8,147.39	\$2,036.85
Assured Source PEO 2, LLC	P725468	9/07	\$7,655.18	\$1,913.79
Assured Source PEO 2, LLC	P808781	10/07	\$11,823.50	\$2,955.87
Assured Source PEO 2, LLC	P921134	12/07	\$13,717.45	\$3,429.35
Assured Source PEO 3, LLC	P606764	1/07	\$5,000.47	\$1,250.11
Assured Source PEO 3, LLC	P606765	2/07	\$6,869.82	\$1,717.45
Assured Source PEO 3, LLC	P606766	3/07	\$12,984.16	\$3,246.04
Assured Source PEO 3, LLC	P606767	4/07	\$10,607.39	\$2,651.85
Assured Source PEO 3, LLC	P606768	5/07	\$9,597.47	\$2,399.36
Assured Source PEO 3, LLC	P606769	6/07	\$11,285.91	\$2,821.48
Assured Source PEO 3, LLC	P606770	7/07	\$8,472.55	\$2,118.14
Assured Source PEO 3, LLC	P659450	8/07	\$11,695.79	\$2,923.95
Assured Source PEO 3, LLC	P866154	11/07	\$13,442.25	\$3,360.55
Assured Source PEO 3, LLC	P866155	12/07	\$17,805.76	\$4,451.41
Assured Source PEO 4, LLC	P182847	1/07	\$0.00	\$154.17
Assured Source PEO 4, LLC	P389113	2/07	\$3,050.32	\$762.58
Assured Source PEO 4, LLC	P389114	3/07	\$3,415.07	\$853.76
Assured Source PEO 4, LLC	P389115	4/07	\$3,107.85	\$776.96
Assured Source PEO 4, LLC	P389116	5/07	\$4,050.15	\$1,012.54
Assured Source PEO 4, LLC	P461687	6/07	\$4,403.05	\$1,100.76
Assured Source PEO 4, LLC	P576116	7/07	\$3,784.78	\$946.20
Assured Source PEO 4, LLC	P659451	8/07	\$5,287.96	\$1,321.99
Assured Source PEO 5, LLC	P335272	1/07	\$0.00	\$150.31
Assured Source PEO 5, LLC	P392517	2/07	\$0.00	\$578.89
Assured Source PEO 5, LLC	P530463	3/07	\$2,802.07	\$700.51

Assured Source PEO 5, LLC	P530464	4/07	\$3,363.98	\$841.00
Assured Source PEO 5, LLC	P530465	5/07	\$6,483.17	\$1,620.79
Assured Source PEO 5, LLC	P530466	6/07	\$6,945.26	\$1,736.32
Assured Source PEO 5, LLC	P571272	7/07	\$5,794.29	\$1,448.56
Assured Source PEO 5, LLC	P654331	8/07	\$6,736.67	\$1,684.17

*Interest accrued per statute