

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

Deanne Brzezicki,  
Petitioner,

MTT Docket No. 449326  
Assessment No. TD13556

v

Michigan Department of Treasury,  
Respondent.

Tribunal Judge Presiding  
Steven H. Lasher

ORDER GRANTING PETITIONER’S MOTION FOR SUMMARY  
DISPOSITION

ORDER DENYING RESPONDENT’S MOTION FOR SUMMARY  
DISPOSITION

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner appeals tax assessment TD13556<sup>1</sup> issued by Respondent to Petitioner as a responsible corporate officer of CTCI Corporation (“CTCI”). Petitioner contends that she is not liable for the subject taxes as a responsible corporate officer of CTCI because she was not in a position of authority responsible for filing the applicable tax return or making tax payments. Petitioner further contends that she should not be held liable as a responsible officer under MCL 205.27a(5) because, although she held the title of President of CTCI, her position held no authority and she never had control of, supervision over, or

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<sup>1</sup> Assessment TD 13556 was issued for CTCI Corporation’s failure to pay Michigan Business Tax for the period ending December 2008.

responsibility for, the filing of the tax returns, or the payment of the taxes at issue.

On July 1, 2013, Petitioner filed her motion for summary disposition under MCR 2.116(C)(10). Respondent filed its response to this Motion on July 22, 2013. On June 25, 2013, Respondent filed its own Motion for Summary Disposition under MCR 2.116(C)(10). Petitioner has not filed a response to Respondent's Motion. The Tribunal finds that Petitioner was not a responsible officer of CTCI pursuant to MCL 205.27a(5) and therefore grants her motion for summary disposition, denies Respondent's motion for summary disposition, and cancels the assessment issued to Petitioner.

### BACKGROUND

Prior to November 2003, Computer Training.com, Inc. provided vocational training, primarily to individuals. In late 2003 Computer Training.com, Inc. was restructured, creating CTCI as a holding company, Computer Training.com LLC as a subsidiary of CTCI, and separate limited liability companies formed to conduct business operations in various locations, with each limited liability company entering into a management agreement with Computer Training.com LLC. David L. Rau was the sole Director and majority shareholder of CTCI, while Curtis J. Hickman was named Secretary of the Corporation. Petitioner was named President of CTCI (Petitioner's Exhibit 1). Petitioner was informed that the title of President was merely a formality needed for the restructuring process. (Petitioner's Brief in Support of Motion, p. 2) CTCI ultimately ceased doing business in 2009. The corporate tax returns, including Michigan returns from 2003 through 2008 were prepared by the firm Rosen, Sapperstein and Friedlander ("RS&F"), under direction of David Rau and all communication between CTCI and RS&F was through either Mr. Rau or Mr. Hickman. Petitioner admittedly signed the 2006 and 2007 Michigan Single Business Tax returns filed by CTCI, as well as the 2008 Michigan Business Tax return (Respondent's Exhibits 5 – 7), but contends that she

did so under the direction of Mr. Rau, and considered this act as merely an administrative task. Petitioner was “an accounting clerk/bookkeeper that . . . had zero involvement with the corporate taxes.” (Petitioner’s Brief in Support of Motion, p. 3)

### PETITIONER’S CONTENTIONS

Petitioner contends that even though she held the title of President and signed the corporate tax returns she was not involved in the decision making process, did not have tax specific authority during the tax periods at issue and, therefore, cannot be held liable as a responsible corporate officer pursuant to MCL 205.27a(5). In support of her contentions, Petitioner states that (i) her title as president of CTCI held no authority as all control and authority rested with David L. Rau, the Chairman and sole director of the company, (ii) she was hired in 1997 to “answer phones, schedule classes and perform other . . . administrative functions” and over time she began to perform tasks such as “accounting functions, accounts payable, accounts receivable and payroll” (Petitioner’s Brief in Support of her Motion for Summary Disposition, p. 2), (iii) in 2003 Mr. Rau restructured the company and asked Petitioner be an officer of CTCI. Petitioner was told the title “was no big deal as all operations were moved to ComputerTraining.com LLC [which] would have a separate management structure and that [her] title of President of CTCI Corp was really just a formality” (*Id.*), (iv) the corporate tax returns were prepared by RS&F, a CPA firm, (v) Petitioner admittedly signed the returns including the Michigan returns but states that she “was given a large stack of returns and told to sign where indicated as an administrative task” (*Id.* at 1), (vi) Petitioner submitted an affidavit of Howard J. Rosen, President of RS&F, who prepared the tax returns, who indicated that the firm was retained by Mr. Rau and only spoke to either Mr. Rau or Curtis J. Hickman and “never had any communication with [Petitioner] regarding the preparation of any of the Tax

Returns” (Affidavit of Howard J. Rosen, p. 1), (vii) Petitioner submitted an affidavit of Donna Hutchinson, the former Chief Compliance Officer of ComputerTraining.com (edu), LLC, who stated that ACCET, the organization which accredited the various schools operated by the company, was concerned with the ownership and control of the company, the person in control was determined to be Mr. Rau as Chairman and sole director of CTCI and the officers “Ms. Brzezicki and Ms. Tully were never interviewed . . . as part of the accreditation process. Although they are noted on corporation documents, they were figure heads with no senior management role and ultimately no control” and the officers “were not part of senior management and they were never present at any management meetings” (Affidavit of Donna Hutchinson, p. 1), and (viii) Petitioner also submitted the affidavit of Curtis Hickman, the former CFO of ComputerTraining.com (edu), LLC, who indicated that Petitioner “did not control, supervise, or [was not] charged with the responsibility for making the return or payment of taxes for CTCI Corp,” “was never an authorized check signer” and she “was given a large stack of CTCI Corp’s returns . . . and [was] told to sign them where indicated. She never had any involvement in the preparation of these returns” nor was she “involved in senior management meetings.” Rather, “Mr. Rau made every major decision and held ultimate control of the operation . . . .” (Affidavit of Curtis Hickman, p. 1).

#### RESPONDENT’S CONTENTIONS

Respondent requests that the Tribunal affirm the assessment against Petitioner. Respondent provided the Tribunal with the corporate tax returns for 2006, 2007, and 2008, which show Petitioner’s signature as “President” as well as the Articles of Amendment creating CTCI listing Petitioner as President and Petitioner’s signature as President. In support of its Motion Respondent contends that (i) Respondent determined that Petitioner was a responsible corporate officer

based upon the documents in its possession including: (a) CTCI Articles of Amendment, signed by Petitioner as President, (b) the 2005 Michigan Single Business tax Annual Return for CTCI, purportedly signed by Petitioner as President,<sup>2</sup> (c) the 2006 Michigan Single Business Tax Annual Return for CTCI signed by Petitioner as President, (d) the 2007 Michigan Single Business Tax Annual Return for CTCI signed by Petitioner as President, and (e) the 2008 Michigan Business Tax Annual Return for CTCI, signed by Petitioner as President, (iv) the documents submitted indicate that Petitioner was a corporate officer because by signing numerous documents as President, she “held herself out as a corporate officer . . . and someone who had authority to file these documents” (Respondent’s Brief in Support of its Motion for Summary Disposition, p. 5), (v) the documents submitted are sufficient to meet Respondent’s prima facie case under MCL 205.27a(5), and (vi) Petitioner must rebut the prima facie case by presenting “proof that she did not have control or supervision of, or the responsibility for, making the returns or payments” and Respondent “does not believe that Petitioner will be able to make such a showing” (*Id.* at 7).

#### APPLICABLE LAW

There is no specific Tribunal rule governing motions for summary disposition. Therefore, the Tribunal is bound to follow the Michigan Rules of Court in rendering a decision on such motions. TTR 215.

Both Petitioner and Respondent move for summary disposition pursuant to MCR 2.116(C)(10), which provides the following ground upon which a summary disposition motion may be based: “Except as to the amount of damages, there is no genuine issue as to any material fact, and the moving party is entitled to judgment or partial judgment as a matter of law.” The Michigan Supreme Court, in *Quinto v*

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<sup>2</sup> Respondent failed to submit the signature page of this document, and as such, the Tribunal is unable to verify that Petitioner did, in fact, sign this return as President.

*Cross and Peters Co*, 451 Mich 358; 547 NW2d 314 (1996), provided the following explanation of MCR 2.116(C)(10):

MCR 2.116 is modeled in part on Rule 56(e) of the Federal Rules of Civil Procedure . . . [T]he initial burden of production is on the moving party, and the moving party may satisfy the burden in one of two ways.

First, the moving party may submit affirmative evidence that negates an essential element of the nonmoving party's claim. Second, the moving party may demonstrate to the court that the nonmoving party's evidence is insufficient to establish an essential element of the nonmoving party's claim. If the nonmoving party cannot muster sufficient evidence to make out its claim, a trial would be useless and the moving party is entitled to summary judgment as a matter of law. In reviewing a motion for summary disposition brought under MCR 2.116(C)(10), a trial court considers affidavits, pleadings, depositions, admissions, and documentary evidence filed in the action or submitted by the parties, MCR 2.116(G)(5), in the light most favorable to the party opposing the motion. A trial court may grant a motion for summary disposition under MCR 2.116(C)(10) if the affidavits or other documentary evidence show that there is no genuine issue in respect to any material fact, and the moving party is entitled to judgment as a matter of law. MCR 2.116(C)(10), (G)(4).

In presenting a motion for summary disposition, the moving party has the initial burden of supporting its position by affidavits, depositions, admissions, or other documentary evidence. The burden then shifts to the opposing party to establish that a genuine issue of disputed fact exists. Where the burden of proof at trial on a dispositive issue rests on a nonmoving party, the nonmoving party may not rely on mere allegations or denials in pleadings, but must go beyond the pleadings to set forth specific facts showing that a genuine issue of material fact exists. If the opposing party fails to present documentary evidence establishing the existence of a material factual dispute, the motion is properly granted. *Id.* at 361-363. (Citations omitted.)

In the event, however, it is determined that an asserted claim can be supported by evidence at trial, a motion under subsection (C)(10) will be denied. *Arbelius v Poletti*, 188 Mich App 14; 469 NW2d 436 (1991).

## CONCLUSIONS OF LAW

The Tribunal has carefully considered Petitioner's and Respondent's Motions under MCR 2.116(C)(10) and finds that granting Petitioner's Motion and denying Respondent's Motion is appropriate, based on the pleadings and other documentary evidence filed with the Tribunal. Petitioner has proven through affidavits, pleadings, and documentary evidence that there are no genuine issues of material fact remaining as fully discussed below.

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.<sup>3</sup>

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. "Prima facie evidence" is evidence which is sufficient to establish a given fact, or the chain of facts constituting a party's claim or defense, which if not contradicted will remain sufficient. It is an inference or presumption of law of a fact in the absence of proof to overcome it. *Department of Environmental Quality v Worth Township*, 289 Mich App 414 (2010); 795 NW2d 13 (2011). It is a rule which does not preclude evidence, but merely declares that certain conduct shall suffice as evidence until the opponent produces contrary evidence.

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. Here, the documentary evidence on record confirms that Petitioner was an officer of CTCI. These documents include CTCI's Articles of Amendment, CTCI's 2006 Michigan Single Business Tax Annual Return, CTCI's 2007 Michigan Single Business Tax Annual Return, and CTCI's 2008 Michigan Business Tax Annual Return which are all signed by Petitioner as President. In addition, Petitioner admits that she held

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<sup>3</sup> 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.

the title of President from 2003 through 2009 when the company was dissolved. Petitioner also submitted evidence of action taken by CTCI's Board of Directors naming her as president.

The statute's signature mechanism provides for establishing a prima facie case of derivative officer liability. Respondent has met this initial burden of establishing a prima facie case by demonstrating that Petitioner was a corporate officer and producing Petitioner's signature on a tax return. See *Dore v Department of Treasury*, unpublished opinion per curiam of the Court of Appeals, decided June 10, 2003 (Docket No. 238344).

Once the Department of Treasury's prima facie case is established, the burden of proof shifts to Petitioner to rebut the presumption that she is responsible for the corporation's failure to pay and to show that she is not a corporate officer, or that she was a corporate officer without control over or responsibility for making returns or tax payments. See *Drake v Michigan Dept of Treasury*, MTT Docket No 204601 (1995). Petitioner must produce evidence sufficient to convince the Tribunal that the nonexistence of the presumed fact is more probable than its existence. *Widmayer v Leonard*, 422 Mich 280, 287 (1985). Competent, material, and substantial evidence that Petitioner had tax specific duties must be weighed against the rebutting evidence.

In this case, Petitioner has submitted three affidavits of individuals who had significant involvement with CTCI, all stating that Petitioner did not have control over or responsibility for making tax returns or payment of taxes. Petitioner also explained, in her Motion, her duties and responsibilities while she was the named President of CTCI, none of which included responsibility or control or the filing of tax returns or the payment of taxes. Specifically, Petitioner states that although she was named President she had no control over any aspect of the company. Petitioner further states that she was "an accounting clerk/bookkeeper that . . . had

zero involvement with senior management level decisions and zero involvement with corporate taxes.” Petitioner’s Brief in Support of her Motion, p. 3. She further states that she was a mere figure head with no authority and that the officers and management reported to Mr. Rau and she was in no way responsible for personnel or officers. Petitioner also states that she lacked any supervisory authority and also “had no authority to remove [officers and senior management] from their positions.” *Id.*

Petitioner admits to signing many tax returns. However, she states in her Motion that she “was given a large stack of returns and told to sign where indicated as an administrative task.” *Id.* at 1. She also states that she did not have a role in the filing and preparation of the returns, and had no control or supervision over the person who made the returns. Instead, Petitioner states that Mr. Rau hired a CPA firm, RS&F, to prepare the returns and that she had no contact with the firm in regards to the contents of the returns. “The tax specific tasks were not merely delegated, the Petitioner held no actual authority to delegate. The responsibility, control and supervision resided with David Rau and Curtis Hickman.” *Id.* at 5.

Petitioner’s contentions are supported by the affidavits she submitted of Howard J. Rosen, Donna Hutchison, and Curtis Hickman. Howard J. Rosen, the President of the accounting firm who prepared the tax returns for CTCI, stated that the firm was retained by David L. Rau and that the firm only spoke to either Mr. Rau or Mr. Hickman and “never had any communication with [Petitioner] regarding the preparation of any of the Tax Returns.” Affidavit of Howard J. Rosen, p. 1. The affidavit of Donna Hutchinson, the former Chief Compliance Officer of ComputerTraining.com (edu), LLC, which was a subsidiary of CTCI, also supports Petitioner’s contentions that she had no tax specific or managerial authority. Ms. Hutchinson stated that ACCET, the organization which accredited the various schools operated by the CTCI Corp. and ComputerTraining.com, was

concerned with the ownership and control of the company. ACCET determined that the person in control was Mr. Rau as Chairman and sole director of CTCI. Ms. Hutchinson further stated that the officers “Ms. Brzezicki and Ms. Tully were never interviewed . . . as part of the accreditation process. Although they are noted on corporation documents, they were figure heads with no senior management role and ultimately no control.” Affidavit of Donna Hutchinson, p. 1. Ms. Hutchinson also stated that the officers, including Petitioner, “were not part of senior management and they were never present at any management meetings.” *Id.* Petitioner also submitted an affidavit from Curtis Hickman, the former CFO of ComputerTraining.com (edu), LLC. Mr. Hickman stated that Petitioner “did not control, supervise, or [was not] charged with the responsibility for making the return or payment of taxes for CTCI Corp.” Affidavit of Curtis Hickman, p. 1. He states that Petitioner “was never an authorized check signer” and she “was given a large stack of CTCI Corp’s returns . . . and [was] told to sign them where indicated. She never had any involvement in the preparation of these returns” nor was she “involved in senior management meetings.” *Id.* Mr. Hickman agrees with Petitioner that, “Mr. Rau made every major decision and held ultimate control of the operation. . . .” *Id.*

Given the above, the Tribunal finds that, based on the evidence presented by Petitioner, including the Affidavits, although Petitioner was the President of CTCI, the title and role of President were mere administrative formalities, lacking any responsibility or control over the filing of tax returns or payment of taxes. The Tribunal finds, therefore, that the following standards for imposing personal liability upon corporate officers have not been satisfied: (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.

Petitioner did not have any control over the making of CTCI's tax returns and was not responsible for the payment of the taxes. Petitioner clearly stated that she did not have the required check signing authority in order to make the payment of the taxes. As indicated above, Petitioner's Motion and brief in support are adequately and reliably supported by the affidavits submitted. Petitioner has reliably established that others were responsible for the preparation of the tax returns and Petitioner merely signed them as an administrative task. Petitioner also had no responsibility to make the returns and payments of taxes to Respondent. Petitioner's mere title of President does not justify a finding that Petitioner is a responsible corporate officer.

Respondent relies solely on its prima facie case and does not attempt to rebut the affidavits submitted by Petitioner. In response to Petitioner's Motion for Summary Disposition, Respondent simply states that it "relies on the brief filed with Respondent's motion for Summary Disposition." Respondent's Response to Petitioner's Motion, p. 2. Respondent's Motion for Summary Disposition establishes the prima facie case (i.e., describes and relies upon the documents signed by Petitioner as President) and simply states that "[i]n order for Petitioner to defeat this prima facie case, she must present proof that she did not have control or supervision of, or the responsibility for, making the returns or payments. The Department of Treasury does not believe that Petitioner will be able to make such a showing." Respondent's Brief in Support of its Motion, p. 7.

As such, the Tribunal finds that Petitioner has reliably established that no genuine issues of material fact remain regarding her authority, or more appropriately lack of authority, in her role as President of CTCI. Petitioner was not responsible for the making of returns or payments nor did she have control or supervision of those who were responsible for making the returns and payments.

Petitioner is not, therefore, a responsible corporate officer. As such, this Tribunal finds that cancellation of the subject assessment is proper and supported.

**JUDGMENT**

**IT IS ORDERED** that Petitioner's Motion for Summary Disposition shall be **GRANTED**

**IT IS FURTHER ORDERED** that Respondent's Motion for Summary Disposition shall be **DENIED**.

**IT IS FURTHER ORDERED THAT** that Respondent's Final Assessment No. TD13556 is **CANCELLED**.

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

By: Steven H. Lasher

Entered: July 30, 2013