

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

Paul S. Zaccagni,
Petitioner,

MTT Docket No. 432413
Assessment Nos. R708802, R630731,
R533166, R533165, R337603, R246419,
R054413, Q762310, Q694029, Q630512,
and Q540268

v

Michigan Department of Treasury,
Respondent.

Tribunal Judge Presiding
B. D. Copping

FINAL OPINION AND JUDGMENT

INTRODUCTION

Petitioner, Paul S. Zaccagni, appeals payroll tax withholding assessments issued by Respondent, Michigan Department of Treasury, against Petitioner as a responsible corporate officer pursuant to MCL 205.27a(5).

Petitioner contends that he is not liable for payroll withholding taxes of American Mortgage Centers, Inc. (“AMC”) because he was not an officer of AMC. Petitioner, however, contends that even if he was deemed to be an officer of AMC, his duties did not involve, nor was he responsible for, tax-related matters.

Notwithstanding forged tax documents, Respondent contends that it established prima facie evidence that Petitioner was a responsible corporate officer of AMC because Petitioner signed the corporation’s 2007 SBT annual return, 2007

Federal S Corporation income tax return, 2009 MBT annual return, 2009 Federal S Corporation income tax return and the Michigan Certificate of Dissolution.

Based on the testimony provided and evidence properly submitted, the Tribunal finds Petitioner is not, as indicated herein, a responsible corporate officer pursuant to MCL 205.27a(5) and, as such, cancels the assessments at issue.

BACKGROUND

AMC was incorporated on April 12, 2004, and was in the business of mortgage originations. Petitioner began negotiations to join AMC with Timothy Goslin, the sole owner, in August, 2007. On September 10, 2007, Petitioner received a stock certificate containing 1,000 shares (100% ownership) in the corporation in exchange for \$25,000 and Petitioner was the 100% owner and shareholder until December 15, 2007, when he sold 190 shares to Mr. Goslin with an option for Mr. Goslin to acquire an additional 390 shares for \$1,000. Petitioner remained an 81% shareholder until December 18, 2009, when the corporation was dissolved. During this time, Petitioner utilized the title of “President.”

On November 16, 2010, Respondent issued 11 Intents to Assess to Petitioner as a “responsible party” liable for payroll withholding taxes due from AMC under MCL 205.27a(5). The taxable monthly periods covered by the assessments are

September 2008 – December 2008, April 2009, June 2009 – September 2009, and November 2009 – December 2009.

Respondent held an informal conference on December 7, 2011, and issued a Decision and Order of Determination on February 28, 2012, which affirmed the Hearing Referee's decision to hold Petitioner liable as a responsible corporate officer of AMC. Final Assessments were then issued to Petitioner on March 19, 2012, and Petitioner filed this appeal with the Tribunal on March 21, 2012. Respondent filed an answer to Petitioner's petition on April 5, 2012, and a hearing was held on August 6, 2012, at which time Petitioner presented four witnesses and Respondent presented one.

PETITIONER'S CONTENTIONS

In support of his contentions, Petitioner asserts that AMC had no formal corporate structure, no bylaws, no corporate minutes, and no board of directors to elect or appoint him as President of AMC. Petitioner also asserts that he had no decision-making powers and at no time did he act as an officer of the company. Rather, Petitioner contends that his participation in the company was necessary because he held a mortgage broker's license, which permitted the company to process FHA mortgages, and that his title as President was used solely to bolster

his credibility when recruiting loan officers for the company, which was his primary role in AMC.

Petitioner further asserts that Mr. Goslin was the only officer and the only person responsible for tax-related matters. More specifically, Petitioner asserts that he had no control or supervision of, or responsibility over making tax returns or remitting tax payments. Although Petitioner did sign the 2007 Single Business Tax (“SBT”) annual return, the 2007 Federal S Corporation income tax return, the 2009 Michigan Business Tax (“MBT”) annual return, and the 2009 Federal S Corporation income tax return, Petitioner asserts that Mr. Goslin hired outside accounting firms to assist him with the preparation of these returns, as well as all of AMC’s payroll withholding tax returns; that Mr. Goslin was the sole contact with those accounting firms and provided them with all information necessary to prepare the returns; that Petitioner signed the returns listed above at Mr. Goslin’s request; and, that he did not review the returns or the source information used as a basis for preparing the returns prior to signing them. In that regard, Petitioner also contends that his signature was forged on numerous other tax documents. (Transcript, pp 7-11, 290-299.)

PETITIONER’S ADMITTED EXHIBITS

1. P-6 AMC’s 2007 Michigan SBT Annual Return
2. P-7 AMC’s 2007 Federal Income Tax Return

3. P-11 AMC's 2008 Federal Income Tax Return
4. P-12 AMC's 2008 MBT Annual Return
5. P-17 Fifth Third Bank Signature Card
6. P-18 Fifth Third Bank Deposit Account Resolutions
7. P-19 Fifth Third Bank Account Records
8. P-20 Fifth Third Bank Account Records
9. P-21 Fifth Third Bank Account Records
10. P-24 Comerica Bank Account Signature Card
11. P-25 Comerica Bank Account Records
12. P-28 Curriculum Vitae of Robert D. Kullman, Forensic Document Analyst
13. P-29 Chart and Signature Samples for Petitioner and Mr. Goslin
14. P-30 Handwriting Charts
15. P-31 Action Plan for AMC
16. P-33 Fair Labor Standards Act Classification Survey for Loan Officers and Branch Managers for PRMI

PETITIONER'S WITNESSES

Robert D. Kullman - Robert D. Kullman is an expert forensic document analyst at Speckin Forensic Laboratories. His primary work as a forensic document analyst involves handwriting comparisons. Mr. Kullman testified that:

- (1) He prepared a report following ASTM (*American Society for Testing and Materials International*) standards comparing the similarities and differences of the handwriting features contained in

- 15 documents, located in Exhibit 29, to determine if Petitioner's handwriting was on those exhibits;
- (2) He analyzed those documents and separated the handwriting into two categories ("purported known" and "questioned") based on readily identifiable and especially unique characteristics in Petitioner's signature, Petitioner's handwritten name, and the printed word "President";
- (3) He found significant differences between the "purported known" and "questioned" handwriting;
- (4) There were not a sufficient amount of like letters and letter combinations to compare Petitioner's signature, Petitioner's printed name, and the word "President" against each other;
- (5) The "purported known" versus "questioned" categories for Petitioner's signature, Petitioner's printed name, and the printed word "President" contained different individuals' handwriting;
- (6) In his opinion, only eight documents contained in Petitioner's Exhibit 29 contain Petitioner's handwriting. The remaining seven documents in Petitioner's Exhibit 29 are forged, in addition to Petitioner's Exhibit 31.

(Transcript, pp 11 – 38.)

Paul S. Zaccagni - Paul Zaccagni (Petitioner) holds a mortgage broker's license.

Petitioner testified that:

- (1) He began negotiations with Mr. Goslin to join AMC as an owner in August, 2007;
- (2) He paid \$25,000 in exchange for 100% ownership (1,000) shares in the corporation on September 10, 2007;
- (3) The September 10, 2007, stock certificate listed Mr. Goslin as President and Secretary;
- (4) The corporation officially started conducting business in October, 2007;
- (5) The corporation had no corporate minutes, no board meetings, and no shareholder meetings;

- (6) He assumed profits would be split 50-50 based on a verbal agreement between himself and Mr. Goslin;
- (7) His primary roles in the company were to recruit loan officers, to assist loan officers if they had questions regarding initiating and processing loans, provide additional financing on an as needed basis, and provide the use of his mortgage broker's license so that the company could process FHA mortgages;
- (8) He was given the title of President for recruitment purposes only and was never compensated for any of his services;
- (9) The title of President had no legal significance;
- (10) He was never elected or appointed as President;
- (11) He never gave Mr. Goslin permission to sign his name on any documents;
- (12) He was a signatory on the Fifth Third Bank account, which was opened on October 17, 2007, but he never wrote a check, nor did he have access to the checkbook;
- (13) The Fifth Third Bank account was closed at the end of the year in 2008 without his permission;
- (14) He never did payroll, never calculated payroll withholding tax, and had no knowledge on how to calculate such taxes;
- (15) He did not prepare, supervise, or have responsibility over the 2007 federal income tax return, nor did he verify anything on the return prior to signing it;
- (16) He signed the 2007 Michigan SBT Annual Return, but did not prepare, supervise, or have responsibility in the making of this return;
- (17) Although he invested between \$140,000 – \$160,000 in the company, he never received any compensation nor distributions from the corporation, other than receiving \$36,000 back in October, 2009, from the \$56,000 he wired into the corporation's Comerica bank account in September, 2009, in order to meet a regulatory body's minimum capital requirement;
- (18) He had no authority over the corporation's two Comerica bank accounts;
- (19) He knew nothing about the financial aspect of the corporation;

- (20) He had no vote in deciding that Primary Residential Mortgage Inc. (PRMI) would acquire AMC;
- (21) He signed the corporation's 2009 Federal income tax return, which was prepared by Addison & Addison, P.C., because his personal accountant told him to do so in order to file his own personal income tax return and although there were errors on the corporation's 2009 Federal income tax, he relied on his accountant's advice that the return could be amended at a later date;
- (22) Although his business cards, which he used for recruitment purposes, stated he was President, he considered himself President of recruiting;
- (23) Outside of recruiting, he only referred to himself as a partner;
- (24) Mr. Goslin handled all the financial and administrative related work;
- (25) Mr. Goslin was in charge of all tax return preparation, including payroll and payroll tax-related matters, and hired and utilized ADP, Addison & Addison, P.C., and S & S Tax Service to assist him in carrying out those responsibilities; and
- (26) Mr. Goslin asked him to sign the 2007 Federal income tax return. (Transcript, pp 38 – 149 & 164 – 239.)

Michael Seykell - Michael Seykell is a tax accountant (enrolled agent) and owns S & S Tax Service in Livonia. Mr. Seykell testified that:

- (1) He met Petitioner for the first time in 2010, when Petitioner requested copies of W-2s and various payroll tax records for AMC;
- (2) He provided the W-2s and copies of federal and state payroll tax records to Petitioner after conferring and receiving Mr. Goslin's approval;
- (3) He was unaware that Mr. Goslin did not pay withholding taxes from September to December, 2008, and for seven months in 2009;
- (4) He delivered all documents he prepared to Mr. Goslin;

(5) Mr. Goslin contacted him to prepare federal and state payroll tax returns for AMC starting in 2008; and

(6) Mr. Goslin provided him with the information necessary to prepare the payroll tax-related documents.

(Transcript, pp 150 – 164)

Howard Heyman - Howard Heyman was recruited as a loan officer by Petitioner.

Mr. Heyman testified that:

(1) He was a loan officer (employee) of AMC (later PRMI) from January, 2008, to March, 2010;

(2) His payroll checks came from Comerica Bank and all of the checks were signed by Mr. Goslin;

(3) He thought Petitioner was a partner in the company, but Petitioner had no official title;

(4) He never observed Petitioner handling financial or tax-related matters;

(5) Petitioner never held himself out as President;

(6) Petitioner only answered questions regarding loans;

(7) Petitioner was not able to assist him with any issues he had regarding payroll and health insurance, only Mr. Goslin was able to answer those questions;

(8) Mr. Goslin negotiated the terms of his employment;

(9) Mr. Goslin ran the company, including handling payroll and health insurance matters;

(10) Mr. Goslin was able to print payroll checks from his computer and would do so on occasion;

(11) Mr. Goslin personally handed out payroll checks;

(12) Mr. Goslin and Petitioner's relationship deteriorated over time;

(13) Mr. Goslin traveled to Utah to discuss being acquired by PRMI, but Petitioner did not go;

(14) Mr. Goslin notified all of the employees, including Petitioner, that AMC would be joining PRMI at a meeting in November, 2009;

(15) It appeared that the decision to join PRMI was solely Mr. Goslin's decision; and

(16) As of January, 2010, the company was acquired by PRMI but continued doing business as AMC.

(Transcript, pp 239 – 269.)

RESPONDENT'S CONTENTIONS

In support of its contentions, Respondent asserts that Petitioner failed to rebut the presumption that Petitioner was a responsible corporate officer.

Respondent also asserts that Petitioner was a corporate officer who had control or supervision of, or was charged with the responsibility for, the making of tax returns or the payment of taxes to Respondent for the tax periods in question. Respondent further asserts that Petitioner was an 81% shareholder in the company, signed tax returns holding himself out as President, and had control, access, and was a signatory to the corporation's Fifth Third Bank account. In that regard, Respondent also contends that more than one corporate officer may be held liable under MCL 205.27a(5). (Transcript, pp 299-302.)

RESPONDENT'S ADMITTED EXHIBITS

1. R-1 AMC's 2007 SBT Annual Return (Petitioner's Signature)
2. R-2 AMC's 2008 MBT Annual Return (Forged Signature)
3. R-3 AMC's 2009 MBT Annual Return (Petitioner's Signature)

4. R-4 AMC's 2008 Annual Return for Sales, Use and Withholding Taxes (Forged Signature)
5. R-5 AMC's 2007 Federal Income Tax Return (Petitioner's Signature)
6. R-6 AMC's 2008 Federal Income Tax Return (Forged Signature)
7. R-7 AMC's 2009 Federal Income Tax Return (Petitioner's Signature)
8. R-8 Certificate of Dissolution (Petitioner's Signature)
9. R-9 Certificate of Appointment of Resident Agent (Forged Signature)
10. R-10 2007 Michigan Annual Report (Profit Corporation Information Update) (Forged Signature)
11. R-11 2008 Michigan Annual Report (Profit Corporation Information Update) (Forged Signature)
12. R-12 2009 Michigan Annual Report (Profit Corporation Information Update) (Forged Signature)
13. R-13 Intents to Assess and Final Assessments

RESPONDENT'S WITNESSES

Angela Helm - Angela Helm has been a Departmental Technician with Respondent in its Collections Division since 2008. Ms. Helm testified that:

- (1) She concluded Petitioner was a corporate officer and that he had tax-specific responsibility based on her review of several documents for AMC, including tax returns, Michigan Annual Reports, and mortgage paperwork; and
- (2) There was a variation among the signatures on the documents she reviewed, but she is not a signature expert, and some signatures matched the signature on Petitioner's individual income tax return.

(Transcript, pp 270 – 289.)

FINDINGS OF FACTS

1. Petitioner is an individual whose legal address is 5953 Hartford Way, Brighton, Michigan 48116.
2. AMC was incorporated on April 12, 2004. According to the Articles of Incorporation, AMC's purpose was to "engage in any activity within the purposes for which corporations may be formed under the Business Corporation Act of Michigan" including "Mortgage Originations."
3. Petitioner paid \$25,000 to AMC on September 10, 2007, in exchange for 1,000 shares (100% ownership) in the company. The September 10, 2007, stock certificate listed Mr. Goslin as President and Secretary. (Transcript, pp 48 – 51.)
4. Petitioner sold 190 shares to Mr. Goslin, with an option for Mr. Goslin to acquire an additional 390 shares for \$1,000, on December 15, 2007, effective January 1, 2007. (Transcript, p 206.) Petitioner remained an 81% shareholder until the corporation was dissolved on December 18, 2009, via a Certificate of Dissolution signed by Petitioner and filed with the State.
5. Petitioner made the following additional capital investments to AMC: \$10,200 in February, 2008; \$25,000 in August, 2008; \$21,500 in October, 2008; \$9,000 in November, 2008; \$56,000 in September, 2009 (however, \$36,000 was returned to Petitioner in October, 2009). (Transcript, pp 77, 119 – 120, 124, 126 – 127 and 175 – 176.)
6. Based on Robert D. Kullman's testimony, it was established that Petitioner's handwriting is contained in eight documents in Exhibit 29:
 - a. Petitioner's Check No. 1051 payable to the State of Michigan
 - b. Petitioner's Check No. 1063 payable to the Michigan Dept. of Treasury
 - c. Petitioner's Check No. 1073 payable to the State of Michigan
 - d. 2007 Federal S Corporation Income Tax Return

- e. 2007 SBT Annual Return
 - f. 2009 MBT Annual Return
 - g. 2009 Federal S Corporation Income Tax Return
 - h. Michigan Certificate of Dissolution
7. Based on Robert D. Kullman's testimony, it was established that Petitioner's handwriting is forged on seven documents in Petitioner's Exhibit 29 and in Petitioner's Exhibit 31:
- a. Certificate of Appointment of Resident Agent
 - b. 2007 Michigan Annual Report
 - c. 2008 Michigan Annual Report
 - d. 2009 Michigan Annual Report
 - e. 2008 Annual SUW Return
 - f. 2008 MBT Annual Return
 - g. 2008 Federal S Corporation Income Tax Return
 - h. Action Plan for AMC
8. According to records obtained from Fifth Third Bank, AMC had four bank accounts with them. The records indicate Petitioner was listed as a signatory on three of those bank accounts. The first bank account that was opened on October 17, 2007, only contained \$20 from June 30, 2008, to December 1, 2008, and a zero balance as of December 31, 2008. The second account maintained a zero balance from April 8, 2008, to December 31, 2008. And the third account contained money from October 16, 2007, to October 1, 2008, but the account was overdrawn as of October 31, 2008, until December 15, 2008, when money was deposited to bring the account balance to zero. The records submitted as exhibits did not contain information pertaining to the fourth account. (See Petitioner's Exhibits 17, 19, 20, and 21.)

9. Petitioner was not listed as a signatory on the corporation's two bank accounts at Comerica. One bank account was opened on June 4, 2004, and the other bank account was opened on March 17, 2009.
10. Mr. Goslin hired ADP, Addison & Addison, P.C., and S & S Tax Service to prepare tax-related documents for AMC.
11. Petitioner's primary roles in AMC were to recruit loan officers, answer employee questions regarding initiating and preparing loans, provide additional financing on an as-needed basis and provide the use of his mortgage broker's license so that the company could process FHA mortgages.
12. As of January, 2010, AMC joined PRMI and was considered PRMI d/b/a AMC. The decision to join AMC with PRMI appeared to be solely Mr. Goslin's decision.
13. Petitioner is not listed as an officer on any of the company's Michigan Annual Reports (Profit Corporation Information Updates) in 2005, 2006, 2007, 2008, or 2009.
14. Mr. Goslin is listed as the President of the company on the 2006 Michigan Annual Report and the 2007, 2008, and 2009 Michigan Annual Reports certify that there are no changes from the previous filing.
15. Following the Order and Determination being issued on February 28, 2012, as a result of the informal conference held on December 7, 2011, Respondent issued 11 Final Assessments to Petitioner.
16. Respondent issued to Petitioner a Final Assessment No. Q540268 ("Final Assessment No. 1") for 09/08 dated March 19, 2012, assessing withholding tax in the amount of \$696.60, penalty in the amount of \$112.27 and interest in the amount of \$63.98 for a total assessment of \$872.85.
17. Respondent issued to Petitioner a Final Assessment No. Q630512 ("Final Assessment No. 2") for 10/08 dated March 19, 2012, assessing withholding tax in the amount of \$696.60, penalty in the amount of \$174.15 and interest in the amount of \$107.37 for a total assessment of \$978.12.

18. Respondent issued to Petitioner a Final Assessment No. Q694029 (“Final Assessment No. 3”) for 11/08 dated March 19, 2012, assessing withholding tax in the amount of \$696.60, penalty in the amount of \$174.15, and interest in the amount of \$102.85, for a total assessment of \$973.60.
19. Respondent issued to Petitioner a Final Assessment No. Q762310 (“Final Assessment No. 4”) for 12/08 dated March 19, 2012, assessing withholding tax in the amount of \$15.55, penalty in the amount of \$3.88 and interest in the amount of \$2.23 for a total assessment of \$21.66.
20. Respondent issued to Petitioner a Final Assessment No. R054413 (“Final Assessment No. 5”) for 04/09 dated March 19, 2012, assessing withholding tax in the amount of \$4,586.13, penalty in the amount of \$1,146.51 and interest in the amount of \$571.52 for a total assessment of \$6,304.16.
21. Respondent issued to Petitioner a Final Assessment No. R246419 (“Final Assessment No. 6”) for 06/09 dated March 19, 2012, assessing withholding tax in the amount of \$4,735.69, penalty in the amount of \$1,183.92 and interest in the amount of \$535.49 for a total assessment of \$6,455.10.
22. Respondent issued to Petitioner a Final Assessment No. R337603 (“Final Assessment No. 7”) for 07/09 dated March 19, 2012, assessing withholding tax in the amount of \$4,735.69, penalty in the amount of \$1,183.92 and interest in the amount of \$516.58 for a total assessment of \$6,436.19.
23. Respondent issued to Petitioner a Final Assessment No. R533165 (“Final Assessment No. 8”) for 08/09 dated March 19, 2012, assessing withholding tax in the amount of \$4,735.69, penalty in the amount of \$1,183.91 and interest in the amount of \$497.68 for a total assessment of \$6,417.28.
24. Respondent issued to Petitioner a Final Assessment No. R533166 (“Final Assessment No. 9”) for 09/09 dated March 19, 2012, assessing withholding tax in the amount of \$4,735.69, penalty in the amount of \$1,183.92 and interest in the amount of \$479.38 for a total assessment of \$6,398.99.
25. Respondent issued to Petitioner a Final Assessment No. R630731 (“Final Assessment No. 10”) for 11/09 dated March 19, 2012, assessing withholding

tax in the amount of \$4,735.69, penalty in the amount of \$1,183.92 and interest in the amount of \$442.19 for a total assessment of \$6,361.80.

26. Respondent issued to Petitioner a Final Assessment No. R708802 (“Final Assessment No. 11”) for 12/09 dated March 19, 2012, assessing withholding tax in the amount of \$4,735.69, penalty in the amount of \$1,183.92 and interest in the amount of \$424.45 for a total assessment of \$6,344.06.

CONCLUSIONS OF LAW

MCL 205.27a states, in pertinent part:

(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 Michigan Supreme Court in *Livingstone v Department of Treasury*, 434 Mich 771, 780; 456 NW2d 684 (1990), set forth the following standard for imposing personal liability upon corporate officers for a corporation’s unpaid taxes:

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.

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, provides that 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, 418-419; 808 NW2d 260 (2010). 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 testimony and exhibits confirm that Petitioner signed and included the designation of President next to his signature on the 2007 SBT annual return, the 2007 Federal S Corporation income tax return, the 2009 MBT annual return, the 2009 Federal S Corporation income tax return, and the Michigan Certificate of Dissolution.

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

Once Respondent's prima facie case is established, the burden of proof shifts to Petitioner to rebut the presumption that he is responsible for the corporation's failure to pay and to show that he is not a corporate officer or that he was a corporate officer without control, supervision, or responsibility for making returns or tax payments, i.e., that he did not have tax-related responsibility. See *Molloy v Dep't of Treasury*, MTT No. 329406, November 4, 2009. 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; 373 NW2d 538 (1985). Competent, material, and substantial evidence that Petitioner had tax specific duties must be weighed against the rebutting evidence.

Petitioner testified at length with regard to his duties and responsibilities, or lack thereof, in his role with AMC. Although Petitioner testified that Mr. Goslin told him he was President, Petitioner further testified that he was never elected nor

appointed as President of the company and he only considered himself President of recruiting and never as President of the company. Petitioner testified that Mr. Goslin ran the company and made all the decisions.

Pursuant to MCL 450.1531(1), unless otherwise provided in the articles of incorporation or bylaws, the officers *shall be* elected or appointed by the board. (Emphasis added.) The articles of incorporation did not list any officers and the company did not have bylaws. Absent any indication of officers in either of those two documents, the statute provides that the officers *must be* elected or appointed by the board. Based on the testimony and evidence, however, the company lacked all corporate formalities, including the lack of a board of directors to elect or appoint any officers.

MCL 450.1531(4) further provides that an officer, as between himself and other officers and the corporation, has such authority and shall perform such duties in the management of the corporation as may be provided in the bylaws or as may be determined by resolution of the board not inconsistent with the bylaws. Again, the company had neither a board of directors to adopt resolutions nor bylaws to lay out the internal rules of the company.

Despite the company's disregard or, more appropriately, failure to follow the Michigan Business Corporation Act, the Tribunal finds that Petitioner's

responsibilities with the company were not akin to those of a corporate president. More specifically, Black's Law Dictionary, 8th ed, 2004, defines "President" as, "[t]he chief executive officer of a corporation" and an "officer" as "a person elected or appointed by the board of directors to manage the daily operations of a corporation" and Petitioner did not manage the daily operations of the company, did not hire or supervise employees, and was not privy to negotiations with respect to PRMI acquiring AMC. Rather, Petitioner made no business decisions for or on behalf of AMC. Although Petitioner was given the title of President of AMC, his role was merely one of form versus substance. See *Hance v Dep't of Treasury*, MTT Docket No. 359040 (January 9, 2012). In other words, while Petitioner may have been titled President for some limited purposes (form), he did not function as "President" or have the authority to act as "President" (substance) inasmuch as Petitioner never performed any tasks that a corporate president would perform. Petitioner merely recruited loan officers for Mr. Goslin to decide whether or not to hire them, answered employee questions regarding initiating and preparing loans, provided financing for the entity on an as-needed basis, and provided the use of his mortgage broker's license so the company could process FHA mortgages. Although the company complied with MCL 450.1911 by filing its Annual Reports with the State, albeit untimely at least for the most part, the 2006 Michigan Annual

Report lists Mr. Goslin as President of the company in 2006, and the 2007, 2008, and 2009 Michigan Annual Returns certify that there are no changes from the previous filing, suggesting that Mr. Goslin was the President of AMC in 2006, 2007, 2008, and 2009 and not Petitioner. As a result, Petitioner was neither the President nor an officer of AMC.

Nonetheless, even if the evidence provided by the parties in this matter were somehow viewed to support Respondent's contention that Petitioner was an AMC "officer," the Tribunal finds that Petitioner has shown that he had no control over the making of the corporation's tax returns and payments of taxes, did not supervise the making of the corporation's tax returns and payments of taxes, and was not charged with the responsibility for making the corporation's returns and payments of taxes to the state. Although Respondent presented documents containing Petitioner's signature, the Tribunal finds that Petitioner successfully rebutted the presumption of liability under MCL 205.27a(5). Not only was Petitioner's signature forged on numerous documents, based on the testimony of an expert witness, but Petitioner and Mr. Heyman testified that Mr. Goslin had sole responsibility for tax-related matters, including payroll and payroll tax; Mr. Goslin hired outside accounting firms to assist him in carrying out this responsibility; Mr. Goslin provided the accounting firms with all information necessary to complete

tax-related documents; Petitioner had never written a check; Petitioner did not have access to the checkbooks even though he was a signatory on the accounts and the bank accounts did not contain sufficient funds to cover the subject assessments when he was a signatory; and, Petitioner was not an authorized signatory on the company's Comerica Bank accounts. While Petitioner did in fact sign some tax returns, Petitioner testified that he did so at Mr. Goslin's request and did not review or verify the contents of those returns prior to signing them. "Other than the documents bearing his signature, [Petitioner] in no way participated in any aspect of operating the company. . . ." See *Cracchiolo v Dep't of Treasury*, unpublished opinion per curiam of the Court of Appeals, issued August 6, 1999 (Docket No. 208042). Furthermore, the documents containing Petitioner's forged signature are "ineffective to bind [Petitioner] as a corporate officer" of AMC. *Id.* All of the testimony presented supports Petitioner's contention that his primary roles in AMC were to recruit loan officers, answer employee questions regarding initiating and preparing loans, provide additional financing on an as-needed basis, and permit the company to utilize his mortgage broker's license. As such, the Tribunal finds there is no compelling evidence to establish that Petitioner had control or supervision of, or responsibility for, making the returns or payments.

After a careful review of all of the testimony and evidence presented by the parties, the Tribunal finds that cancellation of the subject assessments is proper and supported.

JUDGMENT

IT IS ORDERED that Assessment Nos. R708802, R630731, R533166, R533165, R337603, R246419, R054413, Q762310, Q694029, Q630512, and Q540268 are CANCELLED.

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

MICHIGAN TAX TRIBUNAL

By: B.D. Copping

Entered: 10/04/12