

STATE OF MICHIGAN  
DEPARTMENT OF ENERGY, LABOR & ECONOMIC GROWTH  
MICHIGAN TAX TRIBUNAL

Haitham Masri, M.D.,  
Petitioner,

v

MTT Docket No. 324343

Michigan Department of Treasury,  
Respondent.

Tribunal Judge Presiding  
Rachel J. Asbury

FINAL OPINION AND JUDGMENT

INTRODUCTION

A hearing was held in the above-captioned case on September 24 and 25, 2007. Petitioner was represented by E. David Brockman, of Jacob & Weingarten, P.C. Respondent was represented by Bradley K. Morton and Steven B. Flancher, Assistant Attorneys General.

BACKGROUND

The assessments at issue are for unpaid sales tax owed by U.S. Autocare, Monroe, LLC, for the period April, 2005 through October, 2005, totally \$17,301.60, including penalties and then-accrued interest. U.S. Autocare, Monroe, LLC, did not remit the tax due. Respondent issued Intents to Assess Nos. N276459, N339447, N431053, N467491, N467490, N467489, and N531817 against Petitioner as a responsible corporate officer for the unpaid sales tax for the periods at issue. Petitioner did not request an informal conference. A Final Assessment was issued on May 17, 2006, and Petitioner appealed the assessments to the Tribunal on June 20, 2006.

Petitioner and his family were the sole members of U.S. Autocare, Monroe, LLC, a limited liability company. Petitioner owned 45% of the shares, his wife, Dr. Fatina Masri, owned 45% of the shares, and their four children each owned a portion of the remaining 10% of the shares.

The total tax, interest, and penalty due is as follows:

Assessment	Tax	Penalty	Interest*
N276459 04/05	\$ 1,462.17	\$ 365.54	\$ 88.85
N339447 05/05	\$ 1,759.11	\$ 439.78	\$ 99.13
N431053 06/05	\$ 1,844.16	\$ 461.03	\$ 95.04
N467491 07/05	\$ 1,396.15	\$ 349.02	\$ 64.59
N467490 08/05	\$ 1,612.02	\$ 403.00	\$ 66.09
N467489 09/05	\$ 1,632.49	\$ 408.10	\$ 58.61
N531817 10/05	\$ 3,667.50	\$ 916.86	\$112.36
TOTAL	\$13,373.60	\$3,343.33	\$584.67

\*Interest and penalty accruing and to be computed in accordance with sections 23 and 24 of 1941 PA 122.

#### PETITIONER'S POSITION

Petitioner offered the following proposed exhibits:

- P-1: Handwriting Analysis Report of Robert Kullman, dated October 30, 2006 with enclosures
- P-2: Durable Power of Attorney for Superior Investments Limited Partnership and U.S. Autocare, LLC dated 12/20/02 and expiring 12/31/03
- P-3: Management Agreement effective 12/1/02 naming Stephen Wilson as president of U.S. Autocare, LLC
- P-4: First Amendment to Franchise Agreement between U.S. Autocare, LLC and Big O Tires, Inc. dated October 8, 2004 and signed by Stephen Wilson as Chief Operating Officer of U.S. Autocare, LLC
- P-5: Resume of Stephen Wilson listing himself as President and Chief Operating Officer of U.S. Autocare, LLC (Southfield)
- P-6: Letter from Stephen Wilson, President of U.S. Autocare, LLC to Attorney Austin Hirschhorn dated January 4, 2006 re: liquidation of State of Michigan Department of Treasury indebtedness
- P-7: Deposition of Stephen Wilson taken April 20, 2007
- P-8: Deposition of Saidah Almadrehi taken May 7, 2007
- P-9: Video Deposition de bene esse of Fahad Qasi taken June 22, 2007

Exhibits P-1, P-2, P-4, P-5 and P-6 were admitted without objection. Respondent challenged the relevance of Exhibit P-3. The objection to Exhibit P-3 was overruled and the exhibit was admitted. Petitioner's exhibits P-7, P-8, and P-9 were depositions in lieu of live testimony of witnesses. Respondent reserved its objections to testimony made during the depositions for the hearing.

Petitioner contends that U.S. Autocare, LLC was "set up [as] a limited liability corporation to purchase a franchise" by Khalid Awamleh.<sup>1</sup> Petitioner and his wife, Dr. Fatina Masri, then invested "upwards of a million dollars under this business plan."<sup>2</sup> Petitioner contends that although "they were members of a limited liability company; and yes, there is a statutory presumption that they were the persons who ran the business and had the responsibility for the filing and payment of taxes. . . . [t]he reality. . . is that this was never the case. . . . the real operators of the business were the management team put in place by Khalid Awamleh. . . ."<sup>3</sup>

Petitioner asserts that his only role "was that of the investor [and h]is only function was to infuse capital into the operation when necessary."<sup>4</sup>

Petitioner first offered the testimony of Mr. Robert Kullman, a forensic document analyst. Mr. Kullman examined "19 various documents that contained the purported known signatures of Dr. Masri."<sup>5</sup> Mr. Kullman's report stated that "[m]y examination task is to determine if Haitham Masri signed the Taxpayer's Signature on the '2004 Form 165'."<sup>6</sup> Mr. Kullman testified that his

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<sup>1</sup> Transcript dated 09/24/07 p 8, ll 12-13

<sup>2</sup> Transcript dated 09/24/07 p 8, ll 14-15

<sup>3</sup> Transcript dated 09/24/07 p 8, ll 18-26

<sup>4</sup> Transcript dated 09/24/07 p 11, ll 3-5

<sup>5</sup> Transcript dated 09/24/07 p 21, ll 16-17

<sup>6</sup> Petitioner's exhibit P-1, p 2

analysis was based upon examination and comparison of machine copies of a 2004 Form 165 with machine copies of other “purported known signatures”<sup>7</sup> of Petitioner. Mr. Kullman’s opinion was that the signatures on the 2004 Form 165 in comparison to the other documents “were probably not written by the same person”<sup>8</sup> but that the numbers on the comparison tax related documents, “were probably written by the same person.”<sup>9</sup> Mr. Kullman did not have a sample of Petitioner’s handwriting made in his presence nor an original exemplar of Petitioner’s handwriting nor handwriting exemplars of Mr. Hamad, Ms. Almadrahi, Mr. Awamlah, Mr. Qasi, or Dr. Fatina Masri.

Petitioner offered the testimony of Sammy Hamad, a certified public accountant. Mr. Hamad was hired by Mr. Awamlah in March, 2003 to prepare federal and state tax returns, as well as state use and sales tax returns for U.S. Autocare, LLC.<sup>10</sup> Mr. Hamad testified that he was employed full time elsewhere and was an “on-call accountant”<sup>11</sup> for U.S. Autocare. He compiled “the data for each of the 13 individual companies, providing that to Saidah, to file those sales and use reports.”<sup>12</sup> Mr. Hamad testified that he did not see the individual returns or see who signed the returns. Mr. Hamad testified that he met Petitioner only one time.

Petitioner offered the testimony of Dr. Fatina Masri. She testified that she objected to “my [Dr. Fatima Masri’s] involvement and to the business.”<sup>13</sup> Dr. Fatina Masri testified that she began

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<sup>7</sup> Petitioner’s exhibit P-1, p 2

<sup>8</sup> Transcript dated 09/24/07 p 24, l 19

<sup>9</sup> Transcript dated 9/24/07, p 25, l 13

<sup>10</sup> Transcript dated 9/24/07, p 53, ll 8-9

<sup>11</sup> Transcript dated 9/24/07, p 78, l 2

<sup>12</sup> Transcript dated 9/24/07, p 78, ll 12-14

<sup>13</sup> Transcript dated 9/24/07 p 84, ll 8-11, 17

getting “bills from State of Michigan . . . that sales not filed, SBT not filed, and so on . . .”<sup>14</sup> after “the bankruptcy.”<sup>15</sup> At that time, she contacted Ms. Almadrahi and Mr. Hamad and directed Mr. Hamad to prepare the returns.<sup>16</sup> She further testified that she had no conversations or involvement with anyone at the company prior to that time; her “role is purely just loaning money to [Petitioner].”<sup>17</sup> However she further testified that she “took whatever was money left in the company and sent it all to the State of Michigan”<sup>18</sup> to pay outstanding tax bills.

Petitioner testified that he is a physician and was approached by Khaled Awamlah to invest in the U.S. Autocare business. Petitioner executed a durable power of attorney<sup>19</sup> in 2002 appointing Mr. Awamlah because Petitioner was “not available for signing checks, and there are builders who are coming and he has to pay them immediately.”<sup>20</sup> After Mr. Awamlah left in April 2004, Mr. Wilson was “the president and he took on the CEO responsibility.”<sup>21</sup> Petitioner testified that “Mr. Wilson used to come into my office probably every two to three weeks . . . [m]ost of the time I signed for him papers and will give me a quick input what’s going on . . .”<sup>22</sup> but that there was never a discussion about taxes.”<sup>23</sup>

On cross examination, Petitioner acknowledged his signature on the Voluntary Petition for Bankruptcy for U. S. Autocare, LLC.<sup>24</sup> That document lists U.S. Autocare, Monroe, LLC, as a

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<sup>14</sup> Transcript dated 9/24/07 p 87, ll 1-4

<sup>15</sup> Transcript dated 9/24/07 p 87, l 10

<sup>16</sup> Transcript dated 9/24/07 p 87, ll 10-11

<sup>17</sup> Transcript dated 9/24/07 p 87, ll 19-20

<sup>18</sup> Transcript dated 9/24/07 p 88, ll 25-26

<sup>19</sup> Petitioner’s exhibit P-2

<sup>20</sup> Transcript dated 09/25/07 p16, ll 22-24

<sup>21</sup> Transcript dated 09/25/07 p 24, l 5

<sup>22</sup> Transcript dated 09/25/07 p 24, ll 10-15

<sup>23</sup> Transcript dated 09/25/07 p 24, ll 10-25

<sup>24</sup> Respondent’s exhibit 17

business of which Petitioner was “an officer, director, partner, or managing executive”<sup>25</sup> and in which Petitioner as debtor owned “5 percent or more of the voting or equity securities.”<sup>26</sup>

Respondent asked Petitioner to identify documents related to corporations, partnerships, and LLC’s of which Petitioner was an officer, partner, or member and to verify his signature on those documents.<sup>27</sup> Those documents included articles of incorporation of a medical PC, an LLC to operate a gas station, an LLC that “owns properties that are . . . absolute net leases,”<sup>28</sup> a partnership to buy stock although no stock was ever purchased, an LLC to which Petitioner’s car was registered, an LLC to manage Petitioner’s property, the Masri Clinic, PLLC, etc. Petitioner admitted that he signed both the voluntary petition for bankruptcy on behalf of U.S. Autocare, LLC<sup>29</sup> and United States Bankruptcy Court Statement of Financial Affairs related to U.S. Autocare, LLC<sup>30</sup> offered by Respondent as Respondent’s proofs that Petitioner “had the authority to take the company into bankruptcy.”<sup>31</sup> Petitioner admitted signing the 2003 and 2004 single business tax return for U.S. Autocare, LLC.<sup>32</sup> Respondent asked Petitioner to identify his signature, signed as managing member, on the lease agreement for U.S. Autocare LLC dba Big O Tires. Although Petitioner testified that he did not know the entity with which the lease was made, it was his signature. Petitioner further testified that he knew he and his wife were managing members of U.S. Autocare LLC.

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<sup>25</sup> Respondent’s exhibit 18

<sup>26</sup> Respondent’s exhibit 18

<sup>27</sup> Respondent’s exhibits 1-9, and 12-13

<sup>28</sup> Transcript dated 09/25/07 p 37, ll 14-15

<sup>29</sup> Respondent’s exhibit 17

<sup>30</sup> Respondent’s exhibit 18

<sup>31</sup> Transcript dated 09/25/07 p 48 ll 21-22

<sup>32</sup> Respondent’s exhibits 23 and 24

Petitioner offered the testimony of Fahad Qasi via video deposition de bene esse. Mr. Qasi testified that he was employed by U.S. Autocare, Monroe, LLC from February, 2003 to September, 2005, as director of finance, but that he mostly did accounting work.<sup>33</sup> He stated that some of his duties included preparing financial statements for the stores, for Mr. Wilson's review, and that he worked with Sammy Hamad. Mr. Qasi testified that he had no check writing authority, but that "Saidah and Dr. Masri"<sup>34</sup> had signature authority. Mr. Qasi testified that he was personally aware that taxes were not being paid, everybody at the company was, and that he reported this information to Mr. Wilson on several occasions.<sup>35</sup> Mr. Qasi further testified that it was his "understanding that Mr. Wilson was informing Dr. Masri about the unpaid taxes"<sup>36</sup> and that taxes "were included in that aging report. . . . shown as an account payable."<sup>37</sup>

On cross-examination, Mr. Qasi testified that when he was initially hired, he reported to Mr. Wilson and Mr. Awamlah.<sup>38</sup> He stated that Mr. Awamlah told him what bills were to be paid and once Mr. Awamlah left, Mr. Wilson took over.<sup>39</sup> Mr. Wilson would then go to Dr. Masri's clinic to meet with him and update him on what was going on with the company.<sup>40</sup> It was Mr. Qasi's understanding that U.S. Autocare got its money from Dr. Masri.<sup>41</sup>

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<sup>33</sup> Video Deposition, p 6, l 23, 25; p 7, l 11

<sup>34</sup> Video Deposition, p 12, ll 4-9

<sup>35</sup> Video Deposition, p 11, ll 3-12

<sup>36</sup> Video Deposition, p 16, ll 9-13

<sup>37</sup> Video Deposition, p 17, ll 12-15

<sup>38</sup> Video Deposition dated 6/22/07, p 21, ll 11-15

<sup>39</sup> Video Deposition dated 6/22/07, p 26, ll 11-13, 16-17

<sup>40</sup> Video Deposition dated 6/22/07 p 29, ll 17, 23-25

<sup>41</sup> Video Deposition dated 6/22/07, p 26, l 5

Petitioner next offered the testimony of Stephen Wilson. Mr. Wilson testified that he was initially hired by Khaled Awamlah as a consultant for U.S. Autocare in 2002.<sup>42</sup> Mr. Wilson later became the president and Chief Operating Officer. Mr. Wilson testified that he was not involved with the financial aspects of the company.<sup>43</sup> To his knowledge, “it was either Mr. Qasi, Mr. Hamad, . . . another accountant” who was responsible for the preparation of state and federal tax returns.<sup>44</sup> Mr. Wilson further testified that he did not have discussions with Petitioner about taxes prior to September of 2005, “just prior to the filing of Chapter 13 reorganization.”<sup>45</sup>

On cross-examination, Mr. Wilson testified that “prior to the filing for bankruptcy [he] had no involvement with the payment of taxes, . . . not up until the time we actually got prepared to file bankruptcy, . . . when I found all the materials.”<sup>46</sup> Mr. Wilson testified that he “talked to Dr. Masri about the taxes needing to be paid in a post petition plan of reorganization to the Court. . . and it had to include . . . liability such as taxes.”<sup>47</sup> Further, Mr. Wilson testified that he “never kept any tax information regarding the nonpayment of taxes from Dr. Masri.”<sup>48</sup> As soon as Mr. Wilson knew taxes were unpaid, he let Petitioner know. Mr. Wilson testified that “during the period of time from April 2004 through September 2005 no tax returns were put into [his] possession, to tax returns were left in [his] in-box.”<sup>49</sup>

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<sup>42</sup> Transcript dated 9/25/07 p 97, ll 2-9

<sup>43</sup> Transcript dated 9/25/07 p 103, ll 13-19

<sup>44</sup> Transcript dated 9/25/07 p 105, ll 10-17

<sup>45</sup> Transcript dated 09/25/07 p 111, ll 6-7

<sup>46</sup> Transcript dated 09/25/07 p 126, ll 7-11

<sup>47</sup> Transcript dated 09/25/07 p 131, ll 4-8

<sup>48</sup> Transcript dated 09/25/07 p 136, ll 14-16

<sup>49</sup> Transcript dated 09/25/07 p 152, ll 13-16

RESPONDENT'S POSITION

Respondent offered the following proposed exhibits:

- R-1: Articles of Incorporation for Haitham Masri, M.D., P.C.
- R-2: Certificate of Limited Partnership for H & F Automotive Limited Partnership
- R-3: Certificate of Limited Partnership for H & F Homes Limited Partnership
- R-4: Certificate of Limited Partnership for F & H Properties Limited Partnership
- R-5: Certificate of Limited Partnership for H & F Masri Limited Partnership
- R-6: Certificate of Limited Partnership for H & F Tires Limited Partnership
- R-7: Certificate of Limited Partnership for H & F Transport Limited Partnership
- R-8: Articles of Incorporation for Masri Associates, Inc.
- R-9: Profit Corporation Information Update for Masri Associates, Inc. for 2006
- R-10: Articles of Organization for Masri Clinic for Laser & Cosmetic Surgery PLLC
- R-11: Annual Report & Annual Statement for 2005 for Masri Clinic for Laser & Cosmetic Surgery PLLC
- R-12: Certificate of Limited Partnership for Optima Investment Group Limited Partnership
- R-13: Articles of Incorporation for The Masri Foundation
- R-14: Articles of Organization for U.S. Autocare LLC.
- R-15: Annual Return for Sales, Use and Withholding Taxes for U.S. Autocare Marine City, LLC for 2003
- R-16: Power of Attorney for U.S. Autocare Marine City, LLC
- R-17: Voluntary Petition for Bankruptcy for U.S. Autocare, LLC
- R-18: Statement of Financial Affairs for U.S. Bankruptcy Court for U.S. Autocare, LLC
- R-19: Articles of Organization for U.S. Autocare Monroe, LLC
- R-20: Registration for Michigan Taxes for U.S. Autocare Monroe, LLC
- R-21: Annual Return for Sales, Use and Withholding Taxes for U.S. Autocare Monroe, LLC for 2003
- R-22: Notice of Change or Discontinuance for U.S. Autocare Monroe, LLC
- R-23: 2003 Michigan Single Business Tax Annual Return for U.S. Autocare LLC, signed by Haitham Masri
- R-24: 2004 Michigan Single Business Tax Annual Return for U.S. Autocare LCC, signed by Haitham Masri
- R-25: Durable Power of Attorney for Superior Investments Limited Partnership and U.S. Autocare, LLC
- R-26: Articles of Incorporation for Masri Land Development, Inc.
- R-27: Articles of Incorporation for H & F Enterprises, Inc.
- R-28: 2003 Michigan Single Business Tax Annual Return-signed by Fatina Masri
- R-29: 2004 Michigan Single Business Tax Annual Return – signed by Fatina Masri
- R-30: Master Lease Agreement for U.S. Autocare LLC dba Big O Tires – signed by Haitham Masri
- R-31: Four checks signed by Haitham Masri
- R-32: Memo to employees of Big O Tires dated April 7, 2004
- R-33: Management Agreement for Steven Wilson
- R-34: U.S. Autocare Agenda, Wednesday, March 31, 2004
- R-35: Receipt from Law Offices of Fitzgerald & Dakmak, P.C.

R-37: Final Assessments numbered N276459, N339447, N431053, N467491, N467490, N467489, N531817

R-38: Two Ann Arbor Commerce Bank Account Signature Cards

Exhibits R-17, R-23, R-24, R-28, R-29, R-31, R-37 and R-38 were admitted. Petitioner objected to Exhibits R-1 through R-13, R-15, R-16, R-18, R-26, R-30 and R-32, based on relevancy.

Exhibits R-1 through R-13, R-16, R-18, R-26 and R-30 were admitted. The objections to R-15 and R-32 were sustained and the exhibits were not admitted.

Respondent offered the testimony of Mr. Greg Ochoa. Mr. Ochoa was a consultant for U.S. Autocare, LLC in 2002 and an employee from some time during 2003 through March 2004. Mr. Ochoa testified that he left and then returned to work for the company until March or April 2006.<sup>50</sup> Mr. Ochoa was director of store operations for U.S. Autocare, LLC, “overseeing the daily operations of the – I think it was 13 locations.”<sup>51</sup> Mr. Ochoa testified that he did not have anything to do with the financial end of the business.<sup>52</sup> Mr. Ochoa further stated that it was his belief that the decision to terminate Mr. Qasi’s employment was made between Petitioner and Mr. Wilson.<sup>53</sup>

Respondent offered the testimony of Brian Grumeretz, department analyst of Respondent’s collection division. Mr. Grumeretz testified that he started to review the case and had some communication with someone, he did not remember who, on Petitioner’s behalf. He did not remember how the case came to him and testified in general as to how Respondent makes a determination to assess a corporate officer. Mr. Grumeretz testified that the file was reviewed by

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<sup>50</sup> Transcript dated 9/25/07 p 159, ll 6-17

<sup>51</sup> Transcript dated 9/25/07 p 160, ll 8-9

<sup>52</sup> Transcript dated 9/25/07 p 160, ll 22-24

<sup>53</sup> Transcript dated 9/25/07 p 164, ll 23-24

“a department staff member”<sup>54</sup> first and then he did a second review. Mr. Grumeretz used the guidelines under Respondent’s RAB 1989-39 as to what evidence should be looked at to determine if an individual is liable as a responsible corporate officer. Mr. Grumeretz testified that generally, Treasury “review[s] the account and determine[s] who were officers, members or managers and who had the control or responsibility for paying the taxes...or making the returns.”<sup>55</sup> Mr. Grumeretz testified that his determination to assess Petitioner was based on the fact that “he had signed the registration for Michigan taxes and the 2003 and 2004 . . . sales use and withholding annual returns.”<sup>56</sup> Mr. Grumeretz testified that Petitioner signed the two returns as a member and signed the registration for Michigan taxes for U.S. Autocare, Monroe, LLC as a partner. Petitioner also signed a notice of change and the articles of organization.<sup>57</sup> Mr. Grumeretz did not recall if he looked at “any correspondence from Dr. Masri that identified him as an officer responsible for the payment or reporting of taxes.”<sup>58</sup> Mr. Grumeretz testified that he did not “look at any audit or collection reports that identified Dr. Masri as an officer responsible for the payment and reporting of taxes.”<sup>59</sup> Mr. Grumeretz testified that he did not recall seeing any “payment plans with Dr. Masri’s signatures,”<sup>60</sup> any “audits or collections reports. . . [or] correspondence regarding the assessment”<sup>61</sup> with Petitioner’s signature. Mr. Grumeretz further testified that although he recalled some checks paying taxes for U.S. Autocare Monroe, LLC, he did not “recall any being signed by Dr. Masri.”<sup>62</sup>

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<sup>54</sup> Transcript dated 9/25/07 p 206, l 5

<sup>55</sup> Transcript dated 9/25/07 p 182, ll 3-6

<sup>56</sup> Transcript dated 9/25/07 p 182, ll 13-15

<sup>57</sup> Transcript dated 9/25/07 p 182, ll 17-22

<sup>58</sup> Transcript dated 9/25/07 p 208 ll 3-6

<sup>59</sup> Transcript dated 9/25/07 p 207, l 24- p 208, l 2

<sup>60</sup> Transcript dated 9/25/07 p 211 ll 17-18

<sup>61</sup> Transcript dated 9/25/07 p 211, l 25- p 212, l 5

<sup>62</sup> Transcript dated 9/25/07 p 212 ll 8-9

### FINDINGS OF FACTS

Petitioner, along with his wife and four children, were the sole owners of U.S. Autocare, Monroe, LLC. Petitioner owned a 45% interest in U.S. Autocare, LLC; Dr. Fatina Masri owned a 45% interest; and their children owned the remaining 10% interest. As owners and members, they had regular meetings “to review the progress”<sup>63</sup> of U.S. Autocare. Dr. Fatina Masri testified that she signed the tax returns for 2003, 2004, and 2005 but that “it would have been [Petitioner] but I filled in for him basically.”<sup>64</sup> Petitioner offered extensive testimony from many witnesses about the job responsibilities and titles of individuals related to U.S. Autocare Monroe, LLC and U.S. Autocare LLC including Khalid Awamlah, Stephen Wilson, Fahad Qasi, Saidah Almadrehi, and Sammy Hamad. The testimony and evidence illustrated that all of these individuals handled some of the finance and accounting functions of the company, although the testimony of Petitioner’s witnesses was somewhat contradictory as to who had responsibility for what operational functioning of the business. However, no witness testified that Petitioner was not the managing member of U.S. Autocare, Monroe, LLC or U.S. Autocare LLC. More importantly, although Petitioner may not have asked directly about taxes and may have delegated certain financial responsibilities to others, there was no testimony or evidence to support Petitioner’s assertion that he did not have tax related responsibility for U.S. Autocare, Monroe, LLC.

Petitioner’s testimony that he was just a physician and not a business man lacks credibility in light of his testimony concerning his extensive business activities in addition to U.S. Autocare, Monroe LLC, the 12 other U.S. Autocare franchises he owned, and Superior Investments of which he was the general partner. He testified that he “had a good attorney and a good

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<sup>63</sup> Transcript dated 9/24/07 p 107, l 26

<sup>64</sup> Transcript dated 9/24/07 p 113, l 13-14

accountant, . . . and their plan . . . instead of getting a pension plan to actually buy properties, that are absolute net leases. . . mortgage them over the duration of my career,. . . and put them in independent partnerships.”<sup>65</sup> Respondent offered as exhibits organizational documents for more than 15 additional enterprises of which Petitioner was partner, president, member, incorporator, or founder.<sup>66</sup>

Petitioner’s argument that he “gave first Mr. Awamlah and then Mr. Wilson free reign, . . . blanket authority. You run this business the way you want to run it, don’t bother me unless you need money . . .” does not change Petitioner’s responsibility as the managing member of the business. Petitioner can only delegate to others responsibilities that are ultimately his.

Petitioner’s assertion that Mr. Wilson “ran the show”<sup>67</sup> and was “the final authority”<sup>68</sup> again, does not abrogate Petitioner’s underlying responsibility as managing member of the LLC.

Further, Petitioner signed the voluntary petition for bankruptcy filed in October, 2006. U.S. Autocare, Monroe, LLC is listed as a company of which Petitioner is partner and for which Petitioner is qualified to make the filing. The Tribunal does not find credible or relevant Petitioner’s counsel’s arguments that Petitioner did not know what he was signing. The Tribunal, based upon the testimony presented, believes that Petitioner knew his company was filing for bankruptcy when he signed the petition. Further, Petitioner had the authority to make the filing related to U. S. Autocare Monroe, LLC.

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<sup>65</sup> Transcript dated 09/25/07 p 26, ll 16-23

<sup>66</sup> Respondent’s exhibits 1-14

<sup>67</sup> Transcript dated 09/25/07 p 218, l 8

<sup>68</sup> Transcript dated 09/25/07 p 218, l 9

Additionally, the Tribunal finds the testimony of Mr. Kullman as to the validity of Petitioner's signature on certain documents to be of limited value. During cross-examination, Mr. Kullman testified that he did not take an exemplar of Petitioner's handwriting nor did he do a confirmation of Petitioner's signature. He also did not do any handwriting comparisons on Dr. Fatina Masri, or of anyone else at U.S. Autocare, Monroe, LLC.<sup>69</sup> That signatures on the 2004 Treasury Form 165 and the monthly tax returns were "probably not" those of Petitioner, does not rebut the other significant evidence, confirmed by Petitioner himself, that it was his signature on other tax related documents submitted by Respondent.

Petitioner offered no testimony or documentary evidence in support of his contention that Petitioner was not a corporate officer or member with tax related responsibility. Neither Petitioner nor any of Petitioner's witnesses offered testimony that Petitioner did not have responsibility for the filing of returns or payment of taxes. That Petitioner chose not or failed to inquire as to the status of business matters for which he was responsible does not absolve him of that responsibility.

Petitioner testified that he when he found out that Mr. Awamlah embezzled from the company, he fired him and hired Mr. Hamad to replace him. Petitioner further testified that he authorized the bonus for Mr. Hamad.<sup>70</sup> Petitioner clearly had the authority to hire and fire employees and fix the compensation of the employees of the company.

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<sup>69</sup> Transcript dated 9/24/07 p 28, ll 9-12, 15-17, 20; p 28, ll 2-11

<sup>70</sup> Transcript dated 09/25/07 p 92, l 22 - p 317

Petitioner's evidence and testimony in support of his contention that others were responsible for and were taking care of the every day operation of the company was the power of attorney he executed in favor of Mr. Awamlah, which provided that Mr. Awamlah was authorized to "do and exercise all [Petitioner's] rights with respect to my general partnership interest in Superior Investments Limited Partnership... and my membership interest in U.S. Autocare, LLC."<sup>71</sup> Thus, Petitioner delegated to Mr. Awamlah only those activities and actions for which Petitioner had the underlying right and responsibility. Although Petitioner's witnesses testified that they reported on a day-to-day basis to persons other than Petitioner, and Dr. Fatina Masri testified that she had no knowledge or involvement with U.S. Autocare until after receiving the bills, Petitioner did not present any evidence or testimony to show that he was not an officer, member, manager, or partner as specified in the statute or that as such, he was not be liable for the unpaid taxes.

Respondent provided significant evidence, including Petitioner's signature on tax returns, tax-related documents, and corporate documents, to establish that Petitioner was a member of U.S. Autocare, Monroe, LLC for the tax period at issue with the requisite tax related responsibility. Respondent's evidence establishes a prima facie case of Petitioner's liability under MCL 205.27a(5). Petitioner's evidence was not sufficient to rebut this presumption.

The Tribunal finds that Petitioner was an officer, member, manager or partner of U.S. Autocare, Monroe, LLC during the tax period at issue. The Tribunal further finds that Petitioner had tax related responsibility and signed tax returns and payments for taxes due.

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<sup>71</sup> Petitioner's exhibit 2

### CONCLUSIONS OF LAW

MCL 205.27a(5) provides:

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 or 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.

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, if the signature appears on the return, and payments, if the signature appears on the payment or negotiable instrument. (*Sobol v Michigan Dept of Treasury*, 9MTT 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 or she is not a corporate officer, or that he or she was a corporate officer without control over or responsibility for making returns or tax payments, i.e. that he or she did not have tax related responsibility. Evidence that one or more other persons had some tax related responsibility, the power to sign returns, or remit payments for taxes due does not change the underlying responsibility of any other responsible officer. The fact that other persons may also have been in charge of making the return or paying the tax is no defense to Petitioner's liability. *Cygan v Michigan Department of Treasury*, 9 MTT 48, 49 (1995).

Petitioner was the owner and managing member of U.S. Autocare, Monroe, LLC for the time period at issue, during which time that company failed to remit required sales taxes.

Respondent's evidence of Petitioner's signature on tax returns and company filings establishes a prima facie case of Petitioner's responsibility for making the returns and payments and his liability under MCL 205.27a(5). Although some of the exhibits offered by Respondent were for periods prior to or subsequent to the tax period at issue, those documents showed a continuing membership relationship with the company in question. Further, no documentation or testimony was presented by Petitioner to show that at any point during the period at issue he ceased being a managing member of U.S. Autocare, Monroe, LLC. The establishment of the prima facie case by Respondent shifts the burden of proof to Petitioner to show that he is not derivatively liable. *Sobol v Michigan Department of Treasury*, 9 MTT 321 (1995).

Petitioner testified that he did not know the tax status of the company and delegated tax related responsibility. Notwithstanding Petitioner's delegation of some tax related responsibilities to others, Petitioner had the underlying tax related responsibility required by statute as a basis for

liability. Petitioner may delegate tasks to another, but not the responsibility. As such, Petitioner did not meet his burden of proof to rebut the presumption established by Respondent by a preponderance of the evidence.

The Tribunal finds that Respondent established a prima facie case in support of the assessment of Petitioner as a responsible member or corporate officer for the unpaid taxes of U.S. Autocare, Monroe, LLC, herein at issue. Petitioner has failed to meet his burden of proof to rebut the presumption that he is responsible under MCL 205.27a(5).

The Tribunal finds that Petitioner was an officer, member, manager or partner of US Autocare, Monroe, LLC who had control or supervision of, or responsibility for, making the returns or payments and that, pursuant to MCL 205.27a(5), he is personally liable for the unpaid sales tax at issue.

#### JUDGMENT

IT IS ORDERED that Assessment Nos. N276459, N339447, N431053, N467489, N467490, N467491, and N531817 are AFFIRMED.

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

MICHIGAN TAX TRIBUNAL

Entered: April 17, 2009

By: Rachel Asbury