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

G. Peter Molloy,
Petitioner,

v

MTT Docket No. 329406

Michigan Department of Treasury,
Respondent.

Tribunal Judge Presiding
Rachel J. Asbury

FINAL OPINION AND JUDGMENT

ORDER GRANTING RESPONDENT'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING PETITIONER'S MOTION FOR SUMMARY DISPOSITION

ORDER DENYING RESPONDENT'S REQUEST FOR ORAL ARGUMENT

INTRODUCTION

Petitioner appeals Respondent's assessment against him as a responsible corporate officer for the unpaid single business tax liability of IVonyx, Inc. (IVonyx) for the 1999 tax year. On September 10, 2007, Respondent filed a Motion for Summary Disposition pursuant to MCR 2.116(C)(10). In support of its motion, Respondent asserted that, based on the stipulation of facts and Respondent's exhibits, "there is no genuine issue with respect to any material fact and that the Department is entitled to judgment as a matter of law."[1] Respondent also filed a Request for Oral Argument contending that "[a]lthough testimony is unnecessary to develop the pertinent facts, the parties believe the Tribunal's understanding of the legal issues would be aided by oral argument."[2] On September 12, 2007, Petitioner filed a Motion for Summary Disposition asserting that there "is no genuine issue of fact,"[3] and that Petitioner is entitled to judgment.

[1] Respondent's brief in support of its motion for summary judgment, page 11
[2] Respondent's motion for summary judgment, page 1
[3] Petitioner's motion for summary judgment, page 1

Petitioner filed an answer to Respondent's Request for Oral Argument requesting that the Tribunal deny the motion. On September 24, 2007, Respondent filed a Response to Petitioner's Motion for Summary Disposition.

BACKGROUND

Petitioner was the President of IVonyx during the period January 11, 1999 to August 20, 2001. Petitioner was the Chief Financial Officer of IVonyx from February 1998 to January 1999. IVonyx filed the required single business tax annual return for the 1999 tax year on October 11, 2000, but failed to pay the tax due. Respondent assessed IVonyx $63,234.00 for the unpaid taxes, which IVonyx did not pay. That assessment became final and was not appealed. Respondent issued Intent to Assess K338196 against Petitioner as a responsible corporate officer. Petitioner requested an informal conference, which was held. Respondent issued a Decision and Order of Determination accepting the Hearing Referee's Recommendation that the Assessment be upheld against Petitioner. Respondent issued a final assessment on September 28, 2006, which Petitioner appealed to the Tribunal.

Assessment No. K338196, which Petitioner has not paid, for single business tax for tax year 1999, is as follows:

Tax	$ 63,234.00
Penalty	$ 31,617.00
Interest *	$ 31,289.95*
Total	$ 126,140.95*

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

PETITIONER'S CONTENTIONS

Petitioner contends that he was Chief Financial Officer of IVonyx from February 1998 to January 1999, and that he was President and CEO of IVonyx from January 1999 until August 20,

2001. Petitioner admits that he supervised the accounting department of IVonyx during the relevant period but asserts that the Chairman of the Board was principally responsible for making the decisions regarding payment of the SBT liability. Petitioner contends that because of "financial constraints funds were simply not available to pay the SBT taxes."[4]

Petitioner asserts that, pursuant to an Asset Purchase Agreement executed on April 13, 2001, and amended to address the payment of taxes pursuant to Amendment 3 on August 13, 2001, the assets of IVonyx were sold to drkoop.com. The agreement required that an escrow account be established which included a designated "Tax Escrow Amount" of $644,000[5] and Petitioner "assumed that the tax liability had been fully satisfied."[6] Mr. Henry signed all documents related to the Asset Purchase, including an Amendment 3, which required that $1,092,000 from the sale proceeds be set aside in an escrow account to cover the SBT taxes and other specified items. Subsequently, drkoop was liquidated and the single business taxes were never paid.

Petitioner contends that "at all relevant times [he] lacked the authority to pay IVonyx's SBT taxes."[7] Petitioner asserts that Mr. Henry, the chairman of the board, instructed him not to pay the 1999 taxes with the filing of the return and informed him that the "Board of Directors had decided to pay the taxes with the proceeds of the sale of IVonyx."[8] Petitioner then instructed the controller to not make the payment. Petitioner asserts that Mr. Henry had the authority to dictate this non-payment and that he did not have the authority to override Mr. Henry's decision. Petitioner contends that Mr. "Henry was principally responsible for decision-making relative to

[4] Petitioner's pre-trial brief, page 2
[5] Petitioner's pre-trial brief, page 3
[6] Petitioner's pre-trial brief, page 4
[7] Petitioner's brief in support of motion for summary disposition, page 9
[8] Petitioner's brief in support of motion for summary disposition, page 9

the outstanding SBT taxes. Henry had direct and active management over IVonyx. Henry made the ultimate decision not to pay the SBT."[9]

Petitioner further argues that after the asset sale of IVonyx, Petitioner did not know that the escrow funds were not utilized to pay the SBT taxes and that even if he had known he did not know he could be personally assessed for these taxes.

Petitioner argues that, although his signature as a corporate officer on tax related documents is prima facie evidence of his responsibility as a corporate officer under MCL 205.27a(5), the facts and circumstances in this case are sufficient to rebut the presumption of liability. Petitioner relies on *Bedikian v Treasury*, MTT Docket No. 104045, in support of this contention. In *Bedikian*, that petitioner's

> duties as controller involved supervision over the accounting department, preparation of statements for various state agencies, and review of the tax returns. [H]e did not personally prepare tax returns but supervised an employee in his department who handled this task. Bedikian never owned stock or an equity interest in the company. . . . Bedikian alone lacked the authority to pay the taxes without a senior officer's authority.[10]

Petitioner asserts he, like the petitioner in *Bedikian*, lacked the authority to pay the taxes without Mr. Henry's consent. Mr. Henry instructed Petitioner not to pay the taxes when the return was filed, Petitioner did not have the authority to override those instructions, and Mr. Henry assured Petitioner that the "tax would be paid from the proceeds of the sale of the Company."[11] Petitioner asserts that the *Bedikian* decision comports with the public policy "that those persons through whom the corporation acts, and who are in a position to make or forward payment to the

[9] Petitioner's brief in support of motion for summary disposition, page 9
[10] Petitioner's brief in support of motion for summary disposition, page 7
[11] Petitioner's brief in support of motion for summary disposition, page 8

government should be deemed liable for their failure to carry out this obligation. . . ."[12] Petitioner contends he was in the same position as the petitioner in *Bedikian* and that the Court found in that case that the "fact that the president-owner maintained unfettered control over the company, and Bedikian lacked authority to pay the taxes, demonstrated that individual tax liability was inappropriate and unfair."[13] Petitioner asserts that even though he served as a corporate officer and had the authority to sign corporate checks for the payment of taxes, that because he lacked the requisite authority to pay the taxes without consent, he did not engage in activities that would subject him to liability under the statute as a corporate officer.

RESPONDENT'S CONTENTIONS

Respondent contends that "as a corporate officer of IVonyx, Molloy was responsible for the day to day management of the company. . . . had tax specific responsibilities, . . . had the authority . . . to sign checks. . . [and] the authority for signing tax returns . . . ."[14] Further, Petitioner participated in decisions concerning payment of creditors and disbursement of funds. He signed the 1999 SBT return, was aware of the tax liability, and that he "instructed Phillip J. Warden to file the 1999 Michigan Single Business Tax return without payment."[15]

Respondent contends that Final Assessment K338196 was issued against IVonyx, an informal conference was requested and held, the assessment was upheld, and the determination was not appealed to either the Michigan Tax Tribunal or the Court of Claims. The assessment became final and may not now be appealed.

[12] Petitioner's brief in support of motion for summary disposition, page 8
[13] Petitioner's brief in support of motion for summary disposition, page 8
[14] Respondent's brief in support of motion for summary disposition, page 3
[15] Respondent's brief in support of motion for summary disposition, page 3-4

Respondent argues that "a corporate officer is derivatively liable for the failure of a corporation to make returns or pay taxes"[16] and that the statute "plainly states that the signature of any corporate officer on a return or a negotiable instrument submitted in payment of a tax is *prima facie* evidence of the corporate officer's responsibility for making the returns or payments." (emphasis in original)[17] Respondent further argues that the "reasons for nonpayment are irrelevant . . . [and] an officer does not have to be the person that actually prepares or files the returns or pays the taxes to be held liable."[18] Respondent further argues that an officer cannot "escape liability by delegating responsibility to an employee that is not a corporate officer."[19]

Respondent states that there is no dispute that Petitioner was a corporate officer during the tax year at issue and that it is Petitioner's signature on the 1999 single business tax return. Respondent contends that these facts establish, *prima facie*, Petitioner's liability and "raise a presumption unless disproved or rebutted."[20] Respondent further contends Petitioner specifically directed that the 1999 SBT return be filed without payment, and this decision "makes him as liable under the statute as if he had decided to make the payment, since he was, admittedly, the decision maker that directed Mr. Warder to file the return without paying the tax."[21]

Respondent contends that Petitioner had authority to make or direct payments. Even if Mr. Henry may have had more responsibility, or instructed Petitioner not to include payment with the 1999 single business tax return, Petitioner's responsibility still remains.

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[16] Respondent's brief in support of motion for summary disposition, page 5
[17] Respondent's brief in support of motion for summary disposition, page 6
[18] Respondent's brief in support of motion for summary disposition, page 6
[19] Respondent's brief in support of motion for summary disposition, page 6
[20] Respondent's brief in support of motion for summary disposition, page 7
[21] Respondent's brief in support of motion for summary disposition, page 8

Respondent asserts that *Bedikian v Treasury*, MTT Docket No. 104045, is not controlling. In addition to distinguishing the facts, Respondent states that the statutory provision relied upon by the Tribunal in *Bedikian* required a "showing that the officer in question had the requisite responsibility for making the returns *and* payments."(emphasis in original)[22] In a subsequent decision, *Cygan v Department of Treasury*, MTT Docket No192785, the Tribunal noted that "MCL 205.27a(5) requires the officer to have responsibility for making either payments *or* returns."(emphasis in original)[23]

Respondent further contends that the sale of IVonyx in August 2001 does not affect Petitioner's liability, because he "had tax specific responsibilities during the relevant time period."[24]

FINDINGS OF FACT

The parties stipulated to the following facts and the Tribunal finds:

1. G. Peter Molloy was President of IVonyx, Inc. during the period January 11, 1999 to August 20, 2001.
2. G. Peter Molloy was the Chief Financial Officer of IVonyx, Inc. during the period February 1998 to January 1999.
3. G. Peter Molloy signed IVonyx, Inc.'s 1999 Single Business Tax Return.
4. Exhibit A is an accurate copy of IVonyx, Inc.'s 1999 Single Business Tax Return, Form C-8000.
5. The signature appearing on Exhibit A is the signature of G. Peter Molloy.
6. Exhibit B is an accurate copy of the 1998 Information Update IVonyx, Inc. filed with the Michigan Department of Consumer and Industry Services.
7. Exhibit C is an accurate copy of the 1999 Information Update IVonyx, Inc. filed with the Michigan Department of Consumer and Industry Services.
8. Exhibit D is an accurate copy of the 2000 Information Update IVonyx, Inc. filed with the Michigan Department of Consumer and Industry Services.
9. G. Peter Molloy had the authority as an officer of the corporation to sign checks on IVonyx Inc.'s accounts during the period 1998 to 2001.

[22] Respondent's brief in support of motion for summary disposition, page 9
[23] Respondent's brief in support of motion for summary disposition, page 9
[24] Respondent's brief in support of motion for summary disposition, page 10

10. G. Peter Molloy, by signing the 1999 Single Business Tax return of IVonyx, Inc., was aware of the tax liability of the corporation.
11. G. Peter Molloy was one of those who had the authority for signing tax returns and checks of IVonyx Inc. even if not directly responsible for actual preparation of the tax returns or checks for payment.
12. G. Peter Molloy was Chief Executive Officer of IVonyx, Inc. for the period 1999 through 2001.
13. As Chief Executive Officer, G. Peter Molloy had direct supervisory responsibility over Phillip Warden.
14. As Chief Executive Officer of IVonyx, Inc. G. Peter Molloy supervised Phillip J. Warden and directed his activities.
15. As Chief Executive Officer of IVonyx, Inc. G. Peter Molloy instructed Phillip J. Warden to file the 1999 Michigan Single Business Tax return without payment and that payment would be made from proceeds of the sale of IVonyx Inc.
16. As Chief Executive Officer of IVonyx Inc. G. Peter Molloy told Mr. Warden that the 1999 Single Business Tax would be paid from proceeds of the sale of the corporation.
17. As Chief Executive Officer of IVonyx, Inc. G. Peter Molloy negotiated loans on behalf of the corporation.
18. As Chief Executive Officer of IVonyx, Inc. G. Peter Molloy was in contact with the directors of the corporation on a regular basis.
19. As Chief Executive Officer of IVonyx, Inc. G. Peter Molloy discussed the payment of the 1999 Single Business Taxes with Mr. Warden and told him that payment would be made from proceeds of the sale of IVonyx Inc.
20. As an Officer of IVonyx, Inc. G. Peter Molloy met with the Senior Partner of the company's auditing firm and discussed the results of the audit.
21. As Chief Executive Officer of IVonyx, Inc. G. Peter Molloy orchestrated the company's turn around and facilitated the company's sale.
22. As Chief Executive Officer of IVonyx, Inc. G. Peter Molloy was responsible for the day to day management of the company.
23. As Chief Executive Officer of IVonyx, Inc. G. Peter Molloy participated in decisions concerning payment of creditors and disbursement of funds.
24. As Chief Executive Officer of IVonyx, Inc. G. Peter Molloy had the ability to hire and fire employees.
25. In August 2001, the majority of IVonyx's assets were sold through an asset sale to drkoop.com, except for the Company's accounts receivable, which were sold separately.
26. The parties to the Asset Purchase Agreement executed an Asset Purchase Agreement, dated April 13, 2001, and amendments thereto, including Amendment 3**,** dated August 17, 2001, which specifically addresses the payment of the 1999 Single Business Tax, to be paid after the closing sale of IVonyx, Inc.
27. Albert Henry signed the Asset Purchase Agreement and Amendment 3 on behalf of IVonyx.
28. Amendment 3 required the escrowing of funds to pay the outstanding Single Business Tax liability.
29. IVonyx and drkoop.com did not make the Single Business Tax disbursements upon consummation of the Asset Sale.

30. Upon sale of the assets of IVonyx, Inc. to dr.koop.com, Inc. G. Peter Molloy became President of drkoop Lifecare, Inc.
31. G. Peter Molloy was not a shareholder in IVonyx, Inc.

The Tribunal's findings must be supported by competent, material and substantial evidence. *Antisdale v Galesburg*, 420 Mich 265; 362 NW2d 632 (1984).

In that regard, the Tribunal finds that Petitioner was a corporate officer of IVonyx during the period January 11, 1999 to August 20, 2001. Petitioner was listed as Vice President and CFO of IVonyx on the company's 1998 Michigan Corporation Information Update. Petitioner was listed as President of IVonyx on the company's 1999 and 2000 Michigan Corporation Information Updates.

The Tribunal finds that Petitioner signed IVonyx's 1999 single business tax return as President and CEO. Petitioner directed that the return be filed without payment. Further, he was aware that payment had not been made at the time IVonyx was sold. That Petitioner possessed a level of control over tax-related matters such that he had the power to direct that the 1999 single business tax return be filed without payment, implies the corresponding power to direct the payment. Petitioner had knowledge that the taxes weren't paid. That Petitioner was "not aware . . . that he may be held personally liable for the tax liability"[25] is not a defense against the assessment. Further, that another person, in this case Mr. Henry, had tax related responsibility, does not change Petitioner's responsibility.

[25] Petitioner's exhibit 1, affidavit no. 20

The Tribunal finds that final negotiations for the sale and the sales agreement including the establishment of an escrow account to pay the taxes occurred after the end of the tax year at issue and after due date for the tax payment. Notwithstanding this, Petitioner's integral part in negotiating the sale of IVonyx further supports the finding that he had great deal of control of and responsibility for the financial workings of the corporation during the tax year at issue and after. This, along with Petitioner's statements, indicate that he had a high degree of awareness of the financial condition of the corporation. Petitioner admits that he knew that the Sales Agreement established an escrow account out of which a designated sum was to pay the taxes. However, his belief that the taxes were to be paid from the proceeds of the sale is not a defense to the liability that had already arisen under MCL 205.27a. Neither is the fact that the assets in the escrow account set aside for the payment of taxes were distributed by the bankruptcy court other than as agreed upon. The details of the sales agreement, escrow account, and bankruptcy are not relevant here.

The Tribunal finds that Petitioner's reliance on *Bedikian v Department of Treasury*, MTT Docket No. 104045, is misplaced. The facts in that case, which was a sales and withholding tax case, are clearly distinguishable from the facts in this case. In the *Bedikian* case, the petitioner was the secretary, and not a family member, of a closely held family corporation, he did not have check writing authority, he never wrote checks on behalf of the company, and did not signed any sales, use, withholding returns. In this matter, Petitioner was at various times and during the tax years at issue, the President, Chief Financial Officer, and Chief Executive Officer of the corporation. He had check signing authority and he signed the tax return on which the liability herein is based, as well as other corporate documents, in his capacity as a corporate officer. He knew that

the 1999 single business tax annual return was filed without payment. He participated in various financial activities related to the corporation, including assisting in the negotiation of the sale of Ivonyx, well after the tax year at issue and after the tax return and payment was due.

CONCLUSIONS OF LAW

A motion for summary disposition brought under MCR 2.116(C)(10) entitles the moving party to summary disposition when 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.

> Motions for summary disposition are governed by MCR 2.116. A motion for summary disposition under MCR 2.116(C)(10) tests the factual support for a claim and must identify those issues regarding which the moving party asserts there is no genuine issue of material fact. *Maiden v Rozwood*, 461 Mich 109, 119; 597 NW2d 817 (1999). *JW Hobbs Corp v Mich Dep't of Treasury*, Court of Claims Docket No. 02-166-MT (January 14, 2004). This particular motion has had a longstanding history in the Tribunal. *Kern v Pontiac Twp, supra*; *Beerbower v Dep't of Treasury*, MTT Docket No. 73736 (November 1, 1985); *Lichnovsky v Mich Dep't of Treasury, supra; Charfoos v Mich Dep't of Treasury*, MTT Docket No. 120510 (May 3, 1989); *Kivela v Mich Dep't of Treasury*, MTT Docket No. 131823.

The moving party has the initial burden of supporting its claim with affidavits, depositions, admissions and other documentary evidence. MCR 2.116(G)(3). The nonmoving party must by affidavits or other documentary evidence demonstrate specific facts showing that a genuine issue exists for trial. MCR 2.116(G)(4). The nonmoving party may not rest on mere allegations or denials in his or her pleadings, and, if the nonmoving party "does not so respond, judgment, if appropriate, shall be entered against him or her." MCR 2.116(G)(4); see *Quito v Cross & Peters,* 451 Mich 358, 362-372; 547 NW2d 314 (1996); see also *Charfoos, supra* and *Kivela, supra*. The trier of fact evaluates the motion in a light most favorable to the nonmoving party by considering the substantively admissible evidence actually proffered in opposition to the motion. *Maiden, supra* at 121. The mere possibility that the claim might be supported by evidence

produced at trial may not be considered. *Id*. *Occidental Dev LLC v Van Buren Twp*, MTT Docket No. 292745, March 4, 2004.

This matter is an appeal of Respondent's assessment of Petitioner, as a responsible corporate officer, for unpaid single business tax. The statutory provision applicable in this case is MCLA 205.27a(5), which, for the tax year at issue, provided:

> If a corporation liable for taxes administered under this act fails for any reason to file the required returns or to pay the tax due, any of its officers having control or supervision of, or charged with the responsibility for, making the returns or payments is personally liable for the failure. The signature of any corporate officers on returns or negotiable instruments submitted in payment of taxes is prima facie evidence of their responsibility for making the returns and payments. The dissolution of a corporation does not discharge an officer's liability for a prior failure of the corporation to make a return or remit the tax due.

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. *Sobol v Michigan Dept of Treasury*, 9 MTT 321, May 19, 1995. The establishment of the prima facie case then creates a rebuttable presumption. Petitioner has the burden of proof of showing that he 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). Further, in *Cygan v Department of Treasury*, 1998 WL 2016626 (MichApp, 1998), the court rejected the argument that a corporate officer is relieved from the liability because he did not have authority to make payments of taxes.

The *Livingstone* Court further explained that the standard for imposing personal liability upon corporate officer's liability under MCL 205.27a(5) is strictly and solely derivative. See *Livingstone* at 782. A corporate officer cannot escape personal liability by delegating his or her responsibility to an employee. However, personal liability will not attach unless the officer's involvement in the financial affairs of a corporation is tax specific. *Livingstone v Department of Treasury*, 434 Mich 771, 780; 456 NW2d 684 (1990).

Petitioner's reliance on *Bedikian v Treasury,* MTT Docket No. 104045 (1991*)*, in support of his position is misplaced. The statutory provisions that controlled in *Bedikian* were MCL 205.65, section 5 of the sales tax act, and MCL 206.351(5), section 351 of the income tax act. Both provisions, as in effect for the tax years at issue in *Bedikian* required, for a finding of corporate officer liability, a showing that the officer in question had "control, supervision or [is] charged with the responsibility for making the returns *and* payments" of the unpaid taxes. (Emphasis added). MCL 205.27a(5), section 27a of the revenue division act, while worded similarly, has a significant distinction. Section 27a provides that corporate officer liability may be imposed on

any corporate "officers having control or supervision of, or charged with the responsibility for, making the returns *or* payments." In *Bedikian*, the Tribunal specifically noted that it did not read the conjunctive "and" as if it meant "or." In addition to this statutory distinction, the facts in this case are clearly distinguishable from those in *Bedikian*. Petitioner contends that the Court in Bedikian found that the "fact that the president-owner maintained unfettered control over the company, and Bedikian lacked authority to pay the taxes, demonstrated that individual tax liability was inappropriate and unfair."[26] While the court does make this statement, it is not the basis on which the Tribunal made its decision. The Court found that Mr. Bedikian's "participation in corporate doings flowed from his position as controller, and not as corporate secretary. Indeed, Bedikian's corporate office appears to have been titular only."[27] Additionally, several witnesses testified that MTC's owner and president wielded absolute authority. Bedikian attempted to work out a payment plan with Treasury which never materialized, and he resigned from the company. The Court found that Mr. Bedikian had no check writing authority and thus lacked the ability to direct payment of the taxes and, "[t]he decision to exonerate Bedikian because he lacked check-writing authority fully comports with the theory which underlies the legislative decision to impose liability upon . . . those persons through whom the corporation acts, and who are in a position to make or forward payment."[28]

In the instant case, the facts are distinguishable. Here, Petitioner's participation in corporate activities are based on his status as a corporate officer. Here Petitioner was president, not Mr. Henry. Petitioner did not offer the testimony of others in support of his contention that Mr. Henry wielded absolute power but stipulated that he, Petitioner, actively participated in

[26] Petitioner's brief in support of motion for summary disposition, page 8
[27] *Bedikian v Treasury*, MTT Docket No. 104045 (1991)
[28] *Bedikian v Treasury*, MTT Docket No. 104045 (1991)

negotiations for payment agreements with the Department of Treasury and participated in the negotiation of the sale of the company. He remained actively involved with the corporation after the tax year at issue, and unlike Mr. Bedikian, he did not resign, but continued to actively engage in the financial aspects of the corporation and serve as a corporate officer and representative of the company.

Although the Tribunal in *Bedikian* relied upon testimony as to the responsibilities of other board members for financial matters and the use of corporate funds for personal expenses,[29] these issues were the basis for the Tribunal's determination of the petitioner's liability and are not applicable here. Neither was the petitioner's frustration, expressed or not.[30] The Tribunal in *Bedikian* specifically found that "[b]ecause he did not possess the authority to sign, or even cause to be signed, MTC's checks, and accordingly could neither compel the payment of taxes, influence the priority of payments nor control expenditures, Bedikian cannot be held liable for the corporation's nonpayment of taxes."[31]

Petitioner also argues that after the execution of the Asset Purchase Agreement in 2001, he did not have the authority to make the necessary disbursements to satisfy the unpaid 1999 single business tax debt, only Mr. Henry did. Petitioner's lack of authority to pay tax in 2001 does not relieve him of liability as a responsible corporate officer in 1999 for a liability for 1999 single business taxes.

[29] *Bedikian v Treasury*, MTT Docket No. 104045 (1991)
[30] *Bedikian v Treasury*, MTT Docket No. 104045 (1991)
[31] *Bedikian v Treasury*, MTT Docket No. 104045 (1991)

The facts upon which a determination of Petitioner's liability should be made are uncontested.[32] There is no dispute that Petitioner was a corporate officer during the relevant tax period. Petitioner signed the 1999 single business tax annual return. Respondent's initial burden of establishing a *prima facie* case is met. The Tribunal notes that the statutory presumption is not arbitrary. An officer's signature on a return indicates that he or she had final authority over the return or that he or she had control or supervision of preparation of the return and the payment of taxes.

Based on the stipulation of facts and the evidence presented by both parties, Petitioner has failed to rebut the presumption of the assessment's validity. Petitioner's assertions that the chairman of the board decided that payment of the taxes would not be made when the return was filed; that the company was experiencing financial difficulty and arrangements would be made at a later time to pay the taxes; and that he did not realize he could be held personally liable are insufficient to overcome the presumption of validity.

This Tribunal has considered Respondent's Motion for Summary Disposition and Petitioner's Cross-Motion for Summary Disposition under the criteria for MCR 2.116(C), and concludes that there is no genuine issue as to any material fact and that based on the pleadings and other documentary evidence filed with the Tribunal, Respondent's motion for summary disposition should be granted, Petitioner's motion for summary disposition should be denied, and Assessment No. K338196 should be affirmed. The Tribunal finds that oral arguments in the matter are unnecessary.

[32] See Stipulation of Facts

JUDGMENT

IT IS ORDERED that Respondent's Motion for Summary Disposition is GRANTED.

IT IS FURTHER ORDERED that Petitioner's Motion for Summary Disposition is DENIED.

IT IS FURTHER ORDERED that Respondent's Request for Oral Argument is DENIED.

IT IS FURTHER ORDERED that Assessment No. K338196 is AFFIRMED.

IT IS FURTHER ORDERED that the taxes, interest, and penalties shall be as herein set forth:

Tax	$ 63,234.00
Penalty	$ 31,617.00
Interest *	$ 31,289.95*
Total	$ 126,140.95*

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

IT IS FURTHER ORDERED that Respondent shall cause its records to be corrected to reflect the taxes, interest, and penalties as finally shown in the *Judgment* section of this Final Opinion and Judgment within 20 days of the entry of this Final Opinion and Judgment.

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

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

MICHIGAN TAX TRIBUNAL

Entered: November 4, 2009 By: Rachel J. Asbury