STATE OF MICHIGAN

COURT OF APPEALS

BARBARA C. EATON and CENTERFOLDS, INC.,

Petitioners-Appellants,

v

MICHIGAN DEPARTMENT OF TREASURY,

Respondent-Appellee.

UNPUBLISHED
May 8, 1998

No. 202742
Michigan Tax Tribunal
LC No. 00174092

Before: Jansen, P.J., and Kelly and Markey, JJ.

PER CURIAM.

Petitioners appeal the Michigan Tax Tribunal's opinion and judgment modifying a jeopardy assessment that respondent issued against petitioners. We remand the case to the tribunal for recomputation of petitioners' tax liability and affirm all other aspects of the tribunal's decision.

This tax liability dispute arose during a criminal investigation of petitioner Centerfolds, Inc. for pandering and prostitution. Petitioner Barbara Eaton was the sole shareholder and owner of Centerfolds, an out-call service for massage, strip-o-grams, and escort services. Eaton ran the business from her home. Pursuant to MCL 205.26; MSA 7.657(26), respondent issued a jeopardy assessment against petitioners for single business tax and individual income tax. The assessment, which also included 100% fraud penalties and interest, totaled $59,177.20. The tribunal found respondent's formula overly aggressive, however, and modified the assessment. The new assessment, including the 100% fraud penalties, totaled $6,264. Interest was to accrue pursuant to statute. Petitioners raise several issues on appeal.

I

Absent fraud, when reviewing a decision of the Tax Tribunal, this Court is limited to determining whether the tribunal made an error of law or adopted an incorrect legal principle. *Georgetown Place Coop v City of Taylor,* 226 Mich App 33, 43; 572 NW2d 232 (1997). This Court should uphold the tribunal's factual findings unless they are not supported by competent, material, and substantial evidence. *Id.* "Substantial evidence 'is that which a reasonable mind would accept as adequate to

support a decision;' it 'is more than a mere scintilla but less than a preponderance of the evidence.'" *Sweepster, Inc v Scio Twp,* 225 Mich App 497, 502; 571 NW2d 553 (1997) (citation omitted). The failure to base a decision on competent, material, and substantial evidence constitutes an error of law that requires reversal. *Georgetown Place Coop, supra* at 43.

Petitioners first argue that the tribunal failed to make findings of fact regarding fraud and that its assessment of a 100% fraud penalty was not supported by the evidence. We disagree.

Pursuant to MCL 205.23(5); MSA 7.657(23)(5), "if any part of the deficiency or an excessive claim for credit is due to fraudulent intent to evade a tax, or to obtain a refund for a fraudulent claim, a penalty of 100% of the deficiency, plus interest as provided for in subsection (2), shall be added." Determining whether fraud occurred is primarily a question of fact to be decided on the entire record. *Estate of Pittard v Comm'r of Internal Revenue,* 69 TC 391, 400 (1977).[1] Fraud requires actual, intentional wrongdoing, the purpose of which is to evade a tax believed to be owing. *Id.* Fraud is never presumed but must be affirmatively established by respondent. See *Beaver v Comm'r of Internal Revenue,* 55 TC 85, 92 (1970). Because fraudulent intent can rarely be established by direct evidence, it may be inferred from several kinds of circumstantial evidence or "badges of fraud," including: "(1) understatement of income, (2) inadequate records, (3) failure to file tax returns, (4) implausible or inconsistent explanations of behavior, (5) concealing assets, and (6) failure to cooperate with tax authorities." *Bradford v Comm'r of Internal Revenue,* 796 F2d 303, 307-308 (CA 9, 1986) (citations omitted).

Petitioner asserts that the tribunal failed to make any findings of fact concerning fraud and that there is no evidence to sustain a finding of fraudulent intent. MCL 205.751(1); MSA 7.650(51)(1) requires the tribunal's decision and opinion to include a concise statement of facts and conclusions of law. *Oldenburg v Dryden Twp,* 198 Mich App 696, 699; 499 NW2d 416 (1993). Although the tribunal did not explicitly state that it found that petitioners acted with "fraudulent intent," it did conclude that despite Eaton's testimony, reconciliation between the two weekly schedules that were seized and the corresponding production sheets was not possible. Implicit in this conclusion is the finding that petitioners acted with fraudulent intent.

Moreover, this conclusion is supported by substantial evidence. Eaton testified that once she confirmed appointments on the weekly schedule sheet, she crossed out the employee's name and transferred the information to the weekly production sheet. When everything had been confirmed and transferred, she threw away the weekly schedule sheet. However, a comparison between the two weekly schedule sheets which were seized and the corresponding production sheets reveals that of the fifty-five appointments appearing on the two schedule sheets, only one appointment appears on the corresponding production sheet, and that appointment appears on a different day with a different employee. Further, one of the appointments that does not appear involved an undercover officer who paid for his appointment in cash. Two prior appointments by the officer also do not appear on the production sheets.[2] Therefore, we conclude that there is substantial evidence to support the tribunal's decision to assess a fraud penalty.

II

Petitioners next argue that the tribunal erred in calculating Centerfolds' single business tax liability for 1991 and Eaton's individual income tax liability for 1990 by failing to credit petitioners for taxes already paid. Respondent concedes that the tribunal erred by failing to credit Centerfolds for $372 paid when assessing single business tax liability for 1991. Therefore, Centerfolds' 1991 single business tax liability and corresponding fraud penalty should be reduced to $742.

Petitioners also assert that the tribunal erred in computing Eaton's 1990 individual income tax liability by failing to credit her for the $638 paid in 1990. Respondent argues that the tribunal properly credited Eaton for $450 and correctly omitted the $188 property tax credit taken by Eaton because her income bracket precluded taking the credit. We disagree. Even if one uses the tribunal's calculations that estimated Eaton's 1990 income at just over $43,000, her income still falls below the $73,650 limit for the property tax credit. Therefore, she was entitled to the credit. She should only be credited an additional $75 because $113 of the $188 was to be credited toward her 1991 estimated tax, however. Thus, Eaton's 1990 individual income tax liability and 100% fraud penalty should each be reduced to $1,366.

III

Petitioners also argue that Eaton could not be held liable for the single business tax assessed against Centerfolds. We disagree and conclude that it was proper to pierce the corporate veil to hold Eaton liable for the tax. This Court reviews de novo the decision whether to pierce the corporate veil "because of the equitable nature of the remedy." *Foodland Distributors v Al-Naimi*, 220 Mich App 453, 456; 559 NW2d 379 (1996).

Even when the corporation's stock is owned by one individual, the law treats the shareholder and corporation as separate entities. *Bitar v Wakim*, 456 Mich 428, 431; 572 NW2d 191 (1998); *Foodland, supra* at 456. The corporate veil may be pierced and the shareholder held liable, however, where respecting the corporate structure would subvert justice or perpetrate fraud. *Bitar, supra*. While each case must be decided on its facts, this Court has applied the following standard to issues concerning piercing the corporate veil:

> First, the corporate entity must be a mere instrumentality of another entity or individual. Second, the corporate entity must have been used to commit a fraud or wrong. Third, there must have been an unjust loss or injury to the plaintiff. [*Foodland, supra* at 457 (quoting *SCD Chemical Distributors, Inc v Medley*, 203 Mich App 374, 381; 512 NW2d 86 (1994).]

In the present case, each factor is satisfied. First, Centerfolds was a mere instrumentality of Eaton. Eaton owned the business and ran it out of her home, making appointments from there and storing records there. Second, Eaton, who was convicted of accepting earnings of a prostitute, used the business to run an illegal prostitution ring. Third, respondent was injured because it was deprived of taxes due to it. Because each factor is satisfied, Eaton may be held liable for the single business tax.

IV

Petitioners also argue that the tribunal erred by estimating Centerfolds' business activity from available information because its records were inadequate and by admitting into evidence the hearsay testimony of the police interview of Kimberly Hayes and testimony of Agent Diane Salisbury. Petitioners fail to cite any authority supporting these arguments. Therefore these issues are abandoned and need not be considered. This Court will not search for authority to sustain or reject a party's position. *Phillips v Deihm*, 213 Mich App 389, 401; 541 NW2d 566 (1995); *In re Pensions of 19th District Judges Under Dearborn Employees Retirement System*, 213 Mich App 701, 707; 540 NW2d 784 (1995).

Accordingly, we reverse and remand with respect to the computation of petitioner's tax liability and affirm the remainder of the Tax Tribunal's decision.

/s/ Kathleen Jansen
/s/ Michael J. Kelly
/s/ Jane E. Markey

[1] The Tax Tribunal has stated that the Michigan Legislature has incorporated the body of federal tax law into Michigan taxation statutes, concluding that federal precedent is binding unless otherwise provided. *Saleh v Dep't of Treasury*, 1993 WL 106175, *5 (Mich Tax Tribunal) (citing MCL 206.2; MSA 7.557(102)).

[2] The weekly schedule sheets for the prior appointments were not available because petitioner threw them away.