

**STATE OF MICHIGAN**  
**COURT OF APPEALS**

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GREGORY M. CAPLER,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

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UNPUBLISHED

December 20, 1996

No. 185421

LC No. 203980

Before: Jansen, P. J., and Reilly and E. Sosnick,\* JJ

PER CURIAM.

Petitioner appeals by right a decision of the tax tribunal rejecting his constitutional challenge to MCL 205.27a(5); MSA 7.657(27a), and assessing him personally for the unpaid single business tax of Turn-Rite Manufacturing, Inc. for the 1989 tax year. We affirm.

Petitioner was the corporate officer of Turn-Rite in charge of filing the corporation's tax returns and/or paying its taxes. He was also a shareholder. Petitioner concedes Turn-Rite's liability for unpaid taxes and penalties but asserts that the corporation's liability does not extend to him personally.

Petitioner first asserts that application of MCL 205.27a; MSA 7.657(27a) to him constitutes a taking of his property without due process of law in violation of art 1, § 17, of the Michigan Constitution. The constitutionality of a statute is a question of law reviewed de novo by this Court. *Gilson v Treasury Dep't*, 215 Mich App 43, 49; 544 NW2d 673 (1996). Revenue Administrative Bulletin 1989-38 states that "[t]he officer liability provision of [§ 205.27a(5)] has been extended to all taxes administered by the Revenue Act. The amendment to the Revenue Act is the definitive officer liability statute for all of the specific tax acts." Administrative Guide, RAB 89-38, p 194. The single business tax is a specific tax act. MCL 208.31(1); MSA 7.558(31). Pursuant to MCL 208.80(1); MSA 7.558(80) of the Single Business Tax Act, the tax imposed by the act is to be administered pursuant to §§ 205.1 to 205.30 of the Revenue Act. Section 205.27a(5) of the Revenue Act clearly falls within §§ 205.1 to 205.30.

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\* Circuit judge, sitting on the Court of Appeals by assignment.

Section 205.27a(5) as applied to petitioner does not constitute a taking of petitioner's property without due process. Statutes are presumed to be constitutional and this Court will construe a statute as constitutional unless it clearly is not. The presumption of constitutionality is especially strong with regard to tax legislation. The taxpayer must specify the constitutional provision violated as well as overcome the strong presumption of validity. *Caterpillar v Dep't of Treasury*, 440 Mich 400, 413-415; 488 NW2d 182 (1992). If a statute is supported by a rational basis, the choices made and the distinctions drawn by the Legislature are constitutional. A statute comports with due process if it bears a reasonable relationship to a permissible governmental objective. *Verbison v Auto Club*, 201 Mich App 635, 638; 506 NW2d 920 (1993). The Legislature has a strong interest in raising revenue and in ensuring that revenue is collected. Its objective is permissible. In addition, holding the corporate officer in charge of paying taxes and filing returns personally liable for unpaid single business taxes is reasonably related to the objective of collecting revenue. The statute comports with due process.

Petitioner next asserts that Turn-Rite's corporate veil cannot be pierced in order to hold another person liable for the corporation's debts in the absence of an allegation of fraud, illegality or injustice. The tax tribunal did not expressly address petitioner's argument that § 205.27a(5) does not state under what circumstances the corporate veil can be pierced with regard to assessing a corporation's single business tax on a corporate officer. However, implicit in the tribunal's opinion that the single business tax is to be imposed pursuant to §§ 205.1 through 205.30, which include § 205.27a(5), is the finding that the standards for personal liability outlined in § 205.27a(5) apply to taxes assessed under the Single Business Tax Act as well as to taxes assessed under the Sales Tax Act and the Use Tax Act.

The bulletin does not address issues arising under only the Sales Tax Act or the Use Tax Act. It addresses issues arising under all specific tax acts. Administrative Guide, RAB 89-38, p 194. The circumstances under which the corporate veil can be pierced in order to impose personal liability on a corporate officer for a corporation's single business tax are as follows: (1) the corporation owes a single business tax; (2) the corporation fails for any reason to pay the tax; (3) the individual is an officer of the corporation who (a) controls making the returns or paying the taxes; (b) supervises making the returns or paying the taxes; or (c) is responsible for making the returns or paying the taxes. Administrative Guide, RAB 89-39, p 195.

The corporate veil is conferred by statute in Michigan. MCL 450.1541a; MSA 21.200(541a). Section 205.27a(5) is an exception. Generally, when statutes conflict, and one is specific to the subject matter and the other is only generally applicable, the specific statute controls. *Schubert v Dep't of Treasury*, 212 Mich App 555, 559; 538 NW2d 547 (1995). Section 205.27a(5), a statute providing for personal liability under specific circumstances, is a specific exception to the general protection from liability conferred by MCL 450.1541(a); MSA 21.200(541a).

Finally, petitioner asserts that the statute is void for vagueness. A statute is void for vagueness, and thus violates due process, if its prohibitions are not clearly defined. *Petrus v Dickinson Co Comm'rs*, 184 Mich App 282, 299-300; 457 NW2d 359 (1990). The test for vagueness is whether the statute: (1) is overbroad such that it impinges on First Amendment freedoms; (2) does not provide

fair notice of proscribed conduct; or (3) is so indefinite that it confers unfettered discretion on a trier of fact to determine whether the statute has been violated. *Id.* Petitioner's challenge falls under the second prong.

To give fair notice of prohibited conduct, people of common intelligence must understand what the statute prohibits without having to guess at its meaning. *Petrus, supra*, 184 Mich App 300. As discussed above, section 205.27a(5) provides fair notice of when a corporate officer will be held personally liable for unpaid corporate single business taxes.

Affirmed.

/s/ Kathleen Jansen

/s/ Maureen Pulte Reilly

/s/ Edward Sosnick