

STATE OF MICHIGAN
COURT OF APPEALS

EDWARD E. GRIFFIN, JR.,

Petitioner-Appellant,

v

DEPARTMENT OF TREASURY,

Respondent-Appellee.

UNPUBLISHED
May 23, 2013

No. 311118
Tax Tribunal
LC No. 00-409633

Before: HOEKSTRA, P.J., and TALBOT and WILDER, JJ.

PER CURIAM.

Petitioner appeals as of right the Michigan Tax Tribunal's order affirming respondent's assessment of unremitted sales and withholding taxes. The tribunal concluded that petitioner was a responsible corporate officer under MCL 205.27a(5), and thus personally liable for payment of the taxes. Because the tribunal's factual finding that petitioner was a responsible officer was supported by competent, material, and substantial evidence on the whole record, we affirm.

Petitioner was president and co-owner of G&H Hospitality Unlimited, Inc. (G&H), a Michigan corporation that owned and operated R. Stanley's, a restaurant in Kalamazoo Michigan, from June 2005 until February 2008. G&H failed to pay its sales and withholding tax liabilities for January 2007, October 2007, November 2007, and February 2008. As a result, respondent issued petitioner tax bills for G&H's unpaid taxes, penalties, and interest. Petitioner challenged the assessment, and argued that he is not liable for G&H's unremitted taxes under MCL 205.27a(5). The tribunal rejected petitioner's claim, and upon concluding that petitioner was a responsible corporate officer, affirmed respondent's tax assessment against petitioner. Petitioner now appeals as of right.

Our review of the decisions of the Tax Tribunal is limited by Const 1964, art 6, § 28, which provides that "[i]n the absence of fraud, error of law or the adoption of wrong principals, no appeal may be taken to any court from any final agency provided for the administration of property tax laws from any decision relating to valuation or allocation." Accordingly, we are bound by the Tax Tribunal's factual determinations, and may properly consider only questions of law. *Great Lakes Div of Nat'l Steel Corp v City of Ecorse*, 227 Mich App 379, 388; 576 NW2d 667 (1998). Factual findings that are not supported by competent, material, and substantial evidence on the whole record constitute an error of law. *Id.* Substantial evidence is evidence

that a “reasonable mind would accept as sufficient to support a conclusion, and it may be substantially less than a preponderance.” *Inter Coop Council v Dep’t of Treasury*, 257 Mich App 219, 222; 668 NW2d 181 (2003). Final agency determinations are reviewed on the basis of the entire record, and “where there is sufficient evidence, a reviewing court must not substitute its discretion for that of the tribunal’s even if the court might have reached a different result.” *Stege v Dep’t of Treasury*, 252 Mich App 183, 188; 651 NW2d 164 (2002).

On appeal, petitioner argues that the tribunal erred by concluding that he was a responsible corporate officer under MCL 205.27a(5). Petitioner does not dispute that MCL 205.27a(5) makes responsible corporate officers personally liable for unpaid taxes.

MCL 205.27a(5) provides in pertinent part:

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. . . .

Our Supreme Court has explained that in order to hold a petitioner personally liable for the unremitted taxes of a business, the respondent must demonstrate either that (1) petitioner had control over the making of G&H’s tax returns and payments; or that (2) petitioner supervised the making of G&H’s tax returns and payments; or that (3) petitioner was charged with the responsibility for making G&H’s tax returns and payments. *Livingstone v Dep’t of Treasury*, 434 Mich 771, 780; 456 NW2d 684 (1990). Moreover, personal tax liability will not attach to corporate officers who merely have significant involvement in the financial affairs of the corporation; the involvement must be tax specific. *Id.*

In this case, respondent produced several of G&H’s tax returns and payments, all signed by petitioner, in support of its position that petitioner was a responsible corporate officer. On appeal, the parties agree that this constitutes prima facie evidence that petitioner is a responsible officer. However, petitioner argues that the tribunal erred by holding him personally liable because he sufficiently rebutted that presumption with contradictory evidence. See *Dept of Environmental Quality v Worth Twp*, 491 Mich 227, 239 n 25; 814 NW2d 646 (2012). To rebut the presumption of responsibility, petitioner testified that he was not involved in the management of G&H from 2006 forward, and submitted the affidavits of Tad Trimnell, G&H’s general manager, and Rebecca O’Brien, the office manager of petitioner’s medical practice who also acted as G&H’s bookkeeper. Both Trimnell and O’Brien indicated that they had witnessed petitioner handling “financial” matters for G&H “from November 2005 to approximately June 2006,” but “did not witness [petitioner] making business decisions concerning the payment of the obligations of G&H after approximately June 2006.”

The tribunal acknowledged that the affidavits submitted by petitioner proved that he no longer took an active part in the management of the business after June 2006. However, the tribunal did not find this fact sufficient to rebut the presumption that petitioner was a responsible corporate officer under MCL 205.27a(5). Rather, the tribunal noted that petitioner testified that he signed all the tax returns during the existence of the corporation, and that he was the only person with responsibility for making and signing the returns. The tribunal noted that while petitioner testified that he recommended and eventually hired an accountant to prepare the tax returns, petitioner also testified that the ultimate responsibility of reviewing the returns and signing them was his. On the basis of these facts, the tribunal concluded that petitioner was an officer who had the responsibility for making the tax returns, and was thus personally liable for the corporation's unpaid taxes.

Upon review of the entire record, we conclude that the tribunal did not err by holding petitioner personally liable because the tribunal's conclusions are supported by competent, material, and substantial evidence on the whole record. Petitioner's own testimony established that he supervised the making of G&H's tax returns and payments. Petitioner testified that he personally arranged for the accountant hired by his medical practice to be the accountant responsible for preparing G&H's tax returns and payments. When the accountant completed those tax returns and payments, petitioner testified that he personally reviewed and signed them. Moreover, when asked why he reviewed and signed G&H's tax returns and payments, petitioner explained that he believed it was his duty. In light of this evidence, we cannot conclude that the tribunal erred by finding that petitioner was a responsible corporate officer under MCL 205.27a(5).

Affirmed.

/s/ Joel P. Hoekstra
/s/ Michael J. Talbot
/s/ Kurtis T. Wilder