

STATE OF WISCONSIN
TAX APPEALS COMMISSION

SUSAN W. JONES,

DOCKET NOS. 10-S-210
AND 10-W-211

Petitioners,

vs.

DECISION AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

ROGER W. LEGRAND, COMMISSIONER:

These matters come before the Commission for decision after a trial was held in this matter in Milwaukee, Wisconsin, on July 13, 2011. The Petitioner, Susan W. Jones, of Milwaukee, Wisconsin, is *pro se* in these matters and has filed a post-trial brief. The Respondent in these matters (also referred to in this decision as “the Department”) appeared by Attorney John R. Evans, who has also filed a post-trial brief. Terri Stover-Cramer, Resolution Unit, Wisconsin Department of Revenue, was an observer at the hearing. Mr. Ferdinand Jones, III (a/k/a Max), and Justin Jones testified at the hearing for the Wisconsin Department of Revenue and were represented by Attorney John E. Machulak. Also present for the Petitioner was her daughter, Ms. Lydia Jones.

This case involves a responsible person assessment against Petitioner for unpaid sales taxes for the period March 1, 2006, through July 31, 2007, and for unpaid withholding taxes for the period August 1, 2007, through August 31, 2007. Petitioner

denied that she was liable for these taxes because her family limited her control and participation in company affairs during the times in question.

The issues at trial were:

- Whether Petitioner was liable under Wis. Stat. § 77.60(9) as a person required to collect, account for, or pay over sales taxes who willfully failed to do so on behalf of American Auto Carstar, Inc., and
- Whether the Petitioner is liable under Wis. Stat. § 71.83(1)(b)2 as a person required to collect, account for, or pay over withholding taxes who willfully fails to do so on behalf of American Auto Carstar, Inc.

Jurisdictional Facts

1. On October 22, 2009, the Wisconsin Department of Revenue issued a Notice of Amount Due of \$57,439.11 to Petitioner for sales tax liability from March 1, 2006, to July 31, 2007. (Exhibit 1.)

2. On October 22, 2009, the Wisconsin Department of Revenue issued a Notice of Amount Due of \$3,138.74 to Petitioner for withholding related liability from August 1, 2007, to August 31, 2007. (Exhibit 2.)

3. On November, 19, 2009, Petitioner filed a letter with the Wisconsin Department of Revenue, "appealing all taxes owed by American Auto Beauty Carstar, Inc." This was treated by the Wisconsin Department of Revenue as a Petition for Redetermination. (Exhibits 1 and 2.)

4. On June 23, 2010, the Wisconsin Department of Revenue denied the Petitions for Redetermination in both cases. (Exhibits 1 and 2.)

5. On August 23, 2010, Petitioner timely filed Petitions for Review with the Tax Appeals Commission.

6. On September 22, 2010, Respondent filed an Answer denying Petitioner's allegations of facts, and asking that the petition for redetermination be affirmed.

Findings of Facts

7. The Petitioner was an owner of American Auto Beauty Carstar, Inc., at all times during the period under review.

8. The Petitioner was an officer of American Auto Beauty Carstar, Inc., at all times during the period under review.

9. The Petitioner was authorized to sign checks at all times under during the period under review.

10. All checks had to be signed by two of the authorized signatures on the checking account, those being the Petitioner, Max, Justin, and Lydia.

11. The Petitioner voluntarily signed checks with one of the other signatures at all times during the period under review on a regular basis.

12. The Petitioner was instrumental in determining that the rent was paid for the business premises, the Petitioner being a part of the ownership group that owned the premises.

13. The Petitioner hired Lydia in 2005 in order for Lydia to take over for her.

14. The Petitioner was training Lydia during the period under review and supervising Lydia.

15. The Petitioner fired Max and Lydia.

16. The Petitioner initiated loans to herself as well as Lydia.

17. The Petitioner participated in a determination that she should receive a monthly loan in order to cover household care expenses.

18. The Petitioner knew that sales tax was overdue and not being paid, it being noted with the amounts owing on the minutes of the business meetings held during the period.

19. During the period under review, there was discord within the business and among the family members.

20. The discord did not affect Petitioner's responsibilities and duties as an owner and officer of the company.

21. The Petitioner was in sole control of the business during the month of August, 2007, and was the only person at the business with the ability to pay the withholding taxes for that period of time.

22. The Petitioner attempted to file the withholding taxes for August 2007, but the check was not issued or did not clear.

23. The Petitioner admitted that there was no one else she could look to as responsible for the payment of the August 2007 withholding taxes.

Conclusions of Law

1. The Petitioner was a person who had authority and control over the payment of funds of the business.
2. The Petitioner had a duty to pay over the sales taxes to the Department by virtue of knowing that the sales taxes and the withholding taxes were overdue and owing to the Department.
3. The Petitioner willingly and intentionally failed to pay the sales and withholding taxes, in that the Petitioner preferred other creditors over the Department while knowing that the sales and withholding taxes were due.
4. The Petitioner was responsible for the payment of the withholding taxes for August 2007, as the only person within the business with authority to make payments of funds for the business.
5. The action of the Department on the Petition for Redetermination is affirmed.

Discussion and Decision

This case involves the failure to pay sales tax and withholding tax of a family business, American Auto Beauty Carstar, Inc. Petitioner, Susan W. Jones, was an officer and owner of the company at all times during the periods under review. The periods under review for unpaid sales taxes is from March 1, 2006, through July 31, 2007; and for unpaid withholding taxes is from August 1, 2007, through August 31, 2007. Unfortunately, there was a struggle for control of the company within the family, but the evidence produced at trial clearly shows that Ms. Jones maintained control of

the books and finances to the extent necessary to be found under the law as a responsible person.

Wis. Stat. § 77.60(9) defines who is responsible for collecting, accounting for, or paying over sales taxes. Wis. Stat. § 71.83(1)(b)2 defines who is responsible for collecting, accounting for, or paying over withholding tax. The legal standard for personal liability is the authority to pay the taxes or the authority to direct the payment of the taxes, the duty to pay the taxes, and the intentional failure to pay them. *Barbara Bice v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-496 (WTAC 2000); *Mark J. Kuznieski v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-471 (WTAC 2000); *Joseph A. Balestrieri v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-373 (WTAC 1998); *Senf v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 400-441 (WTAC 1999); *Lepp v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 203-125 (WTAC 1990); and *Gould v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 203-319 (WTAC 1992).

The Department established all three elements at the trial for both the unpaid sales tax and the unpaid withholding tax.

**Liability for Unpaid Sales Tax
Section 77.60(a) Wis. Stat. from
March 1, 2006 through July 31, 2007**

The evidence is clear that Ms. Jones, Petitioner, was an owner of the business at all times. (Transcript, p. 15, lines 13-25.) Petitioner was Treasurer of the company, paid the bills, and knew that sales tax liabilities were owed. (Exhibit 11.) Petitioner paid other vendors and other accounts ahead of the sales tax liabilities. (Exhibit 11.) Petitioner voluntarily signed checks throughout the period in question. (Exhibits 50

and 51.) In fact, she approved the business paying rent and salary to herself, during the period in question. (Transcript, p. 24, lines 7-25, p. 25, lines 1-25, and p. 26 lines 1-6.) Petitioner's defense is that she was not on the premises of the company during the time the sales taxes were not paid. Because of a feud with her son, Ferdinand Jones, III (a/k/a Max), she did not know what was going on at the business. There was a considerable amount of testimony, at the trial about the family dysfunction and how it adversely affected the company. Although it was sad to hear, it was irrelevant to the issue of whether Petitioner was liable, as a responsible person, for the unpaid sales tax.

From the evidence and documents presented at trial, it is clear that Petitioner had the authority and the duty to pay the sales taxes of American Auto Beauty Carstar, Inc., and that she intentionally failed to pay them from March 1, 2006 through July 31, 2007. Petitioner is a responsible person under Wis. Stat. ¶ 77.60(9).

Liability for Withholding Tax - Wis. Stat. 71.83(1)(b)2

The Department assessed Petitioner for the unpaid withholding taxes for American Auto Beauty Carstar, Inc. from August 1, 2007, through August 31, 2007. During this period, Petitioner was both an owner and treasurer of the company. In fact, she was the only person authorized to sign checks and to pay creditors during this period. At the trial, Petitioner admitted that she had the authority and the duty to pay the withholding taxes, and that they were unpaid. (July 30, 2011, Transcript, p. 12, lines 14-16, and p. 32, lines 4-19.) Her excuse for nonpayment was that she thought the withholding was paid. She admitted liability for the unpaid withholding tax saying, "I can't say somebody else owes that check, I can't say that." (Transcript, p. 12, lines 15-

16.) By her own admission and the evidence presented at trial, Petitioner is liable as a responsible person for the unpaid withholding tax from August 1, 2007 through August 31, 2007.

Therefore,

IT IS ORDERED THAT

1. The Department's denial of the Petition for Redetermination with respect to the unpaid sales taxes in Docket No. 10-S-210 is affirmed.

2. The Department's denial of the Petition for Redetermination with respect to the unpaid withholding taxes in Docket No. 10-W-211 is affirmed.

Dated at Madison, Wisconsin, this 16th day of March, 2012.

WISCONSIN TAX APPEALS COMMISSION

Lorna Hemp Boll, Chair

Roger W. LeGrand, Commissioner

Thomas J. McAdams, Commissioner

ATTACHMENT: "NOTICE OF APPEAL INFORMATION"