S T A T E O F M I C H I G A N

C O U R T O F A P P E A L S

B L RENTALS, INC., Petitioner-Appellant,	UNPUBLISHED February 14, 2006
v DEPARTMENT OF TREASURY, Respondent-Appellee.	No. 257578 Tax Tribunal LC No. 00-298265

Before: Wilder, P.J., and Zahra and Davis, JJ.

PER CURIAM.

Petitioner appeals as of right a Michigan Tax Tribunal (MTT) order affirming respondent's disallowance of its small business credit under the Single Business Tax Act (SBTA), MCL 208.1 *et seq*. We affirm.

Between 1993 and 1996, Brian DeDoes (DeDoes) was the owner, in whole or in part, of three Michigan corporations, including petitioner. DeDoes was the president and sole employee of a fourth corporation, B L Rentals Management, Inc. (Management). Management was owned by a third party, but it was incorporated by DeDoes as a way to allocate his salary among the other three corporations. Through his employment with Management, DeDoes provided overall management for petitioner and the other two corporations. Petitioner paid a management fee to Management, which covered administrative costs, wages, and other benefits for DeDoes. Management paid DeDoes' compensation, and it withheld his federal and state income taxes. Respondent audited petitioner and concluded that petitioner had exceeded the $95,000 officer-compensation ceiling under MCL 208.36(2)(b)(i). Therefore, respondent disallowed petitioner's previously claimed small business credits and determined that petitioner owed a tax deficiency of $64,642.00, with accrued interest totaling $44,613.44. Petitioner challenged the disallowance. The MTT affirmed respondent's assessment.

Our "'review of a decision by the [MTT] is limited to determining whether the tribunal erred in applying the law or adopted the wrong principle; its factual findings are conclusive if supported by competent, material and substantial evidence on the whole record.'" *Czars, Inc v Dep't of Treasury*, 233 Mich App 632, 637; 593 NW2d 209 (1999), quoting *Mich Bell Telephone Co v Dep't of Treasury*, 445 Mich 470, 476; 518 NW2d 808 (1994). See also Const 1963, art 6, § 28.

The gravamen of petitioner's appeal is that the MTT should have concluded that DeBoes was legally the employee of Management, rather than the employee of petitioner. The SBTA imposes "a specific tax upon the adjusted tax base of every person with business activity in this state that is allocated or apportioned to this state." MCL 208.31(1). "[I]n calculating its [SBTA] tax base, a corporation [must] include compensation paid." *Herald Wholesale v Dep't of Treasury*, 262 Mich App 688, 696; 687 NW2d 172 (2004), citing MCL 208.9(5). "Compensation" is statutorily defined as "all wages, salaries, fees, bonuses, commissions, or other payments made in the taxable year on behalf of or for the benefit of *employees*, officers, or directors of the taxpayers." MCL 208.4(3) (emphasis added). However, the SBTA authorizes a "small business credit" deduction where, in addition to other requirements, the taxpayer's "[c]ompensation and director's fees of a shareholder or officer [do not] exceed $95,000.00." MCL 208.36(2)(b)(i), (4).

The SBTA provides the following definitions:

> (1) "Employee" means an employee as defined in section [26 USC] 3401(c) of the internal revenue code. A person from whom an employer is required to withhold for federal income tax purposes shall prima facie be deemed an employee.
>
> (2) "Employer" means an employer as defined in section [26 USC] 3401(d) of the internal revenue code. A person required to withhold for federal income tax purposes shall prima facie be deemed an employer. [208.5(1)-(2).]

"An individual is an employee for federal employment tax purposes if he has the status of an employee under the usual common law rules applicable in determining the employee-employer relationship." *Mid America Mgt Corp v Dep't of Treasury*, 153 Mich App 446, 462; 395 NW2d 702 (1986), citing 26 CFR 31.3401(c)-1 and (d)-1. "This common law test primarily focuses on the right to direct and control the manner and method of providing a service, although other factors may be considered." *Mid America, supra* at 458.

Petitioner first argues that the MTT erred by misapplying *Herald Wholesale*, *supra*.[1] We disagree. In *Herald Wholesale*, the plaintiff corporation was in the business of selling building materials. It contracted with another company for a "staff leasing" agreement, under which the other company would "fulfill [the] plaintiff's personnel needs, including hiring, firing, payment of wages, and withholding for federal tax purposes." *Harold Wholesale*, *supra* at 691. The other company would be the employer of the employees it provided, it would administer employment taxes and compensation coverage, and would have "full control" over personnel decisions. *Id*., 691-692. The Department of Treasury concluded that two workers provided under this agreement, who performed "managerial, administrative, and executive duties" for the plaintiff, were plaintiff's employees for the purposes of the SBTA, and it assessed the plaintiff for their compensation accordingly. This Court rejected the Department of Treasury's assessment

[1] Because the tax years at issue range from 1993 to 1996, MCL 208.4(4) does not resolve the instant dispute. See *Herald Wholesale, supra* at 694-696.

because, by virtue of MCL 208.5(2), circumstances where one entity is required to withhold federal income taxes for another create a rebuttable presumption that the former is the latter's employer. *Id*., 697. This "rebuttable presumption establishes a prima facie case and places the burden of proof on the opposing party." *Id*.

The same presumption applies here, and its rebuttal depends on who had the right to direct and control DeDoes. *Mid America, supra* at 458. Because Management withheld DeDoes' federal and state income taxes, respondent had the burden of rebutting the presumption that Management, and not petitioner, was DeDoes' SBTA employer. *Id*., 697. Given the deference accorded to MTT rulings, we cannot say that the MTT adopted a wrong legal principle, or that its factual findings were not "supported by competent, material and substantial evidence on the whole record." See *Czars, Inc, supra*, at 637. This conclusion is reinforced by the narrow construction afforded tax exemptions. *Mount Pleasant v State Tax Comm*, 267 Mich App 1, 3; 703 NW2d 227 (2005). Unlike the situation in *Herald Wholesale*, DeDoes created Management "for administrative convenience . . . 'as a way to allocate [his] salary among the other business entities that he was involved in,' as a common paymaster rather than employee leasing." Management was neither created, nor operated, as a human resources management company. DeDoes had sole control over both petitioner and Management. He had the right to allocate his resources as he saw fit, including discharging the ostensibly leased management services. There was no distinction between DeDoes, as president and officer of petitioner, and DeDoes, as president, officer and employee of Management. As the MTT noted, contrary to *Mid America, supra*, and *Herald Wholesale, supra*, "where the owners and companies involved in both ends of the leasing of employees were separate and distinct from those leased employees, the case at hand involves one person associated with and as both lessee and lessor."

Petitioner next argues that the MTT erroneously disregarded stipulated facts in its ruling. We disagree. Generally, when parties stipulate to facts before a governmental agency, "those facts are to be taken as conclusive." *Columbia Assoc v Dep't of Treasury*, 250 Mich App 656, 665; 649 NW2d 760 (2002). See also MCR 2.116(A). The parties stipulated that Management "was the employer of . . . DeDoes." As a matter of common factual understanding, an employer is "a person or business that employs one or more people for wages or salary." *Random House Webster's College Dictionary* (1997), p 428. However, "'stipulations of law are not binding.'" *Gates v Gates*, 256 Mich App 420, 426; 664 NW2d 231 (2003), quoting *Staff v Johnson*, 242 Mich App 521, 535; 619 NW2d 57 (2000). The SBTA explicitly defines "employer." MCL 208.5(2). Whether an individual satisfies this specific statutory definition, as opposed to a definition stemming from common vernacular, is a question of law. See *Associated Builders & Contractors v Wilbur*, 472 Mich 117, 123; 693 NW2d 374 (2005). Therefore, the parties' stipulation that DeDoes was Management's employee is nonbinding for SBTA purposes. The MTT did not err in declining to decide the case strictly on the basis of that factual agreement.

Finally, petitioner argues that the MTT disregarded petitioner's and Management's distinct corporate entities. We disagree. The act of disregarding the corporate entity, or piercing the corporate veil, is "[t]he judicial act of imposing personal liability on otherwise immune corporate officers, directors, and shareholders for the corporation's wrongful acts." Black's Law Dictionary (7th ed). See also *Seasword v Hilti, Inc*, 449 Mich 542, 548; 537 NW2d 224 (1995). No piercing took place here. Rather, tax liability was merely assessed to the party properly liable

for it under the SBTA. The entities of petitioner and Management were not disregarded so as to impose corporate liability on those operating or maintaining an interest in the entities.

Affirmed.

/s/ Kurtis T. Wilder
/s/ Brian K. Zahra
/s/ Alton T. Davis