



Report on Litigation

Summarized below are recent significant Wisconsin Tax Appeals Commission (WTAC) and Wisconsin Court decisions. The last paragraph of each decision indicates whether the case has been appealed to a higher Court.

The following decision is included:

Withholding Taxes

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WITHHOLDING TAXES

Officer liability. [Jason K. Sandberg vs. Wisconsin Department of Revenue](#) (Wisconsin Tax Appeals Commission, November 18, 2011).

The issue in this case is whether the taxpayer is a responsible person who is personally liable for the unpaid withholding taxes of Ken Sandberg Drywall, Inc., under sec. 71.83(1)(b)2., Wis. Stats, for the periods of December 31, 2004; January 31 through December 31, 2005; and January 15 through June 30, 2006.

Ken Sandberg Drywall, Inc., a Wisconsin corporation, was engaged in the business of drywall installation. The business was incorporated in 2004 as a continuation of a sole proprietorship owned and operated by Mr. Kenneth Sandberg. At all relevant times, Mr. Kenneth Sandberg was the president, secretary, treasurer, sole shareholder and director of the corporation. The corporation was *only* a change in the formal structure of the business; otherwise, the day-to-day operation of the business continued the same as it had been.

The taxpayer was a salaried employee of the corporation and a son of Mr. Kenneth Sandberg. The taxpayer was named as a signatory on the bank account at the insistence of the company's bank as a convenience to the business - specifically, in order to have someone in the office available to sign checks. Even though the taxpayer had the authority to sign checks, he did so to pay employees, creditors, and taxing bodies only if payment was approved by Kenneth Sandberg.

Procedurally, in order to show that an officer or employee is a responsible person, the department has the initial burden of going forward with evidence. The department must produce clear and satisfactory evidence that the taxpayer had the **authority** to pay the company's taxes and the **duty** to pay them, and there was **an intentional breach of that duty**. To prove the element of intent, the department need only show that the taxpayer made decisions to use corporate funds to pay creditors, with knowledge of taxes being due. Once the department produces the required evidence, the burden normally shifts, and then the taxpayer must overcome the department's case by clear and satisfactory evidence.

The Commission determined that the department met its initial burden that the taxpayer was a responsible person for the withholding taxes at issue, but the taxpayer subsequently proved at trial that he clearly was not, in fact, a "responsible person" within the meaning of the case law and the statutes. Therefore, the Commission ruled that the taxpayer is not personally liable for the unpaid withholding taxes.

The department has not appealed this decision.