

No. A11-2020

STATE OF MINNESOTA

IN SUPREME COURT

Scott L. Stevens,

Relator,

vs.

Commissioner of Revenue,

Respondent.

**BRIEF AND APPENDIX
OF
RESPONDENT COMMISSIONER OF REVENUE**

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The appendix to this brief is not available for online viewing as specified in the *Minnesota Rules of Public Access to the Records of the Judicial Branch*, Rule 8, Subd. 2(e)(2).

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LEGAL ISSUES

1. Did the Tax Court correctly deem Mr. Stevens a responsible person and therefore personally liable for petroleum and sales taxes assessed to Twin Cities Avanti Stores, LLC?

The Tax Court held that Mr. Stevens is a responsible person subject to personal liability for petroleum taxes and sales taxes incurred by Twin Cities Avanti Stores, LLC.

Apposite authorities:

Minn. Stat. § 270C.56 (2008)

Minn. R. Civ. P. 56.03

Larson v. Comm’r of Revenue, 581 N.W.2d 25 (Minn. 1998)

Peterson v. Comm’r of Revenue, 566 N.W.2d 710 (Minn. 1997)

DLH, Inc. v. Russ, 566 N.W.2d 60, 69 (Minn. 1997)

Benoit v. Comm’r of Revenue, 453 N.W.2d 336 (Minn. 1990)

2. Did the Tax Court err by entering summary judgment for Commissioner despite Mr. Steven’s request for additional discovery to develop an estoppel defense?

The Tax Court held that the defense the Appellant was bringing, estoppel, was not an available defense and therefore additional discovery was not required.

Apposite authorities:

In re Mesaba Aviation Div. of Halvorson of Duluth, Inc. v. County of Itasca, 258 N.W.2d 877 (Minn. 1977)

Ridgewood Dev. Co. v. State, 294 N.W.2d 288 (Minn. 1980)

Nicollete Restoration, Inc. v. City of St. Paul, 533 N.W.2d 845 (Minn. 1995)

STATEMENT OF THE CASE

Relator Scott Stevens is appealing the Tax Court's entry of summary judgment to Respondent Commissioner. Mr. Stevens is challenging several personal liability assessments that the Commissioner made based on unpaid petroleum and sales tax owed by Twin Cities Avanti Stores, LLC ("Avanti"). The periods at issue are September 2008 through April 2009. The amount at issue for all periods, as of September, 2009, exceeds \$4 million.¹ Three of the Orders were issued on June 16, 2009, and the appeals were timely docketed with the Tax Court on September 11, 2009. The Docket Numbers for these appeals are 8144-R, 8145-R, and 8146-R. A fourth Order of the Commissioner was issued on September 2009. This was timely appealed by Mr. Stevens on November 23, 2009, and assigned Docket Number 8167-R.

The Commissioner filed a Motion for Summary Judgment on November 1, 2010. The Tax Court heard arguments on December 3, 2010. The Tax Court issued its Order on September 14, 2011, and Honorable George W. Perez granted the Commissioner's Motion for Summary Judgment.

In addition to the assessment against Mr. Stevens, the Commissioner also assessed Bruce Nelson with personal liability for the same outstanding petroleum and sales tax liability, over the same periods of time. The Tax Court granted summary judgment to the Commissioner on Mr. Nelson's appeal, and Mr. Nelson has appealed to the Minnesota

¹ The tax liability, after taking into account various partial payments, is approximately \$3,500,000. Penalties and interest (through the time of filing in this Court) account for approximately \$500,000, although interest continues to accrue pursuant to Minn. Stat. § 289A.55 (2010).

Supreme Court separately. *See Nelson v. Comm’r of Revenue*, Minn. No. A11-2020.

Mr. Stevens appeals the decision of the Tax Court, and asserts that the Tax Court erred by granting summary judgment to the Commissioner, by not allowing additional discovery to explore an estoppel defense, and that there were additional questions of fact regarding his personal liability for the unpaid petroleum and sales tax.

STATEMENT OF FACTS

I. THE RELEVANT ENTITIES AND STEVENS’ POSITIONS.

Mr. Stevens, who has worked in the petroleum fuel industry for more than 20 years, has an undergraduate degree in accounting and an MBA with a concentration in finance and management. RA. 15, Ex. A at 7-8. Stevens joined Twin Cities Stores, Inc., (“T.C. Stores”), the retail convenience & gas store operations owned by Bruce Nelson and located in Minnesota, in 1998. *Id.* at 9, 17, 21.² In 2001, Mr. Nelson acquired a group of similar stores, also located in Minnesota and the surrounding states, which formed the operations of Avanti. *Id.* at p. 21. Avanti did business as Oasis Markets, and operated convenience stores using the names Oasis Markets, Food ‘n Fuel, Happy Dan’s, and Budget Mart. RA 15, A-0151 (Ans. to Interrog. No. 2).

Mr. Stevens left Avanti and T.C. Stores in early 2005 and started a fuel-hauling business. RA 15, Ex. A at p. 27. In October 2005, however, he returned and was given

² T.C. Stores was part of a group of affiliated entities in which Mr. Nelson held ownership interests, and which later included Avanti. Other Nelson-owned entities included Goodtime Stores and Roundtree Market or RM Group. *See* RA 15, A - 0154, 0156-0157, (Interrog. Nos. 8, 18); RA 14, A - 0102, ¶ 3.

responsibilities for both Avanti and T.C. Stores. *Id.* at p. 31. After his return, Stevens was “president of RM Group with operational responsibilities over the stores owned by” Avanti and T.C. Stores; was the “Chief Operating Officer” for Avanti with operational responsibilities; and was the “President” of both Avanti and T.C. Stores. *See* RA 15, Ex. A at 62; RA 15, A - 0154, A - 0155 (Interrog. Nos. 8, 11); RA 15, A - 0142; RA 15, A - 0210 (authorized signer as “President”). By 2005, Avanti was wholly owned by RM Group, an entity in which Bruce Nelson held the majority interest.³ Other shareholders, including Mr. Stevens, collectively held approximately 15% of the stock in RM Group. RA 15, A - 0152-0153 (Interrog. Ans. No. 4). Mr. Stevens’ ownership interest in RM Group was just under 1%. *Id.*

II. STEVENS’ WORK WITH AVANTI.

Mr. Stevens had personnel and human resources responsibilities for Avanti. RA 15, Ex. A at p. 100. He also entered into a consulting agreement to retain a financial consultant, Robert Lovejoy (“Consultant”) to “consult and advise on financial matters” for Avanti and T.C. Stores. *See* RA 15, A - 0145-0150. Mr. Lovejoy, who was not an employee of either Avanti or T.C. Stores, prepared weekly cash budgets for review by Stevens and Nelson; and directed payments to be made to vendors or creditors after either Stevens or Nelson authorized him to do so. *See* RA 14, A - 0104, ¶¶ 7-8. Under the

³ Avanti filed for Chapter 11 protection in the Bankruptcy Court for the Central District of California in 2003. *See* RA 15, A - 0191-0195, A - 0209. Mr. Stevens, who was then Avanti’s Manager/Treasurer, affirmed the resolution authorizing the bankruptcy filing. RA 15, A - 0209. He testified that he did not participate in the decision to file that petition. RA 15, Ex. A at p. 35. At the time, Bruce Nelson effectively held 100% of Avanti through his ownership interest in RM Group’s predecessor, Roundtree Markets, Inc.

terms of his agreement, the Consultant could not “make or implement decisions customarily reserved for directors and officers of a company, including “authorizing disbursements.” RA 15, A - 0146, ¶ 4.

Mr. Stevens also held operational responsibility for Avanti, which he described as “day-to-day operations to make sure that the things that needed to get done happened.” RA 15, Ex. A at 63, 78. For example, Mr. Stevens signed the 2008 application to renew Avanti’s Petroleum Distributor License with the Department of Revenue. *Id.* at 71; *see also* RA 15, A - 0144. He also authorized the gas purchases needed for store operations. *See* RA 15, Ex. A at 59, 63-64 (describing oversight role and operational responsibility); *see also* RA 14, A - 0103, ¶ 6 (Stevens “regularly arranged, directed, or approved inventory purchases which committed [Avanti] to corresponding accounts payable liabilities. Purchase commitments were limited in amount by projected cash balances in cash flow forecasts prepared by [Mr. Nelson].”).

On financial matters, Stevens initiated the discussions to sell a group of stores to a local competitor, and then brought together the buyer and Mr. Nelson to discuss the price. RA 15, Ex. A at 47, 65-66. Stevens also proposed the business model of “dealerizing,” rather than operating stores, a model on which Avanti relied to promote its proposed payment plans with the Department. RA 15, Ex. A at 66-70; *see also* RA 15, A - 0204, 0206-0207. Stevens also authorized or approved disbursements for purchases and debt payments. RA 15, A - 0178, 0179, 0188, 0202. Mr. Stevens acknowledges that there was no specific dollar limit on his decision-making authority; for example, he was an authorized signer on several Avanti corporate bank accounts. *See* RA 15, Ex. A at

pp. 63-64; RA 15, A - 210-0229. Nevertheless, if Mr. Stevens perceived “resistance” to his decisions, he discussed the decision with Mr. Nelson. RA 15, Ex. A at p. 64 (explaining he “could make one decision that might involve a million dollars, but it is a tenth of a cent on a gas. So that might be viewed as a pretty significant decision, but really not a big deal, it is to the scale.”).

As the operator who ran Avanti’s business, *Id.* at 64 (“I was an operator. I was to run the business”), Stevens reviewed a weekly cash budget prepared by the financial consultant, Mr. Lovejoy. *See* RA 15, Ex. A at 89, 203-04; A - 0174-0177; RA 14 0122-0124, 0127-0134. The cash budget identified proposed payments to be made for various trade and non-trade accounts - including tax accounts, and utilities. RA 15, A - 0174-0177. Stevens and Nelson would review the proposed disbursements for the week and approve payments to be made based on expected cash revenues. *See* RA 15, Ex. A at p. 204 (payments were approved for release after review of cash budget and forecast model); *See also* RA 14, A - 0127-0134 (“[Nelson] is good-to-go with the budget, unless Scott can override any of the proposed payments.”) (Aug. 17, 2008 e-mail); *Id.*, A - 0122-0124 (“Bruce and Scott approved payment of the Audit’s invoice for the MN Gas Tax audit.”) (May 7, 2008 e-mail). Mr. Stevens knew that Avanti’s monthly gas tax liability was approximately \$800,000, “depending on what our purchases were.” RA 15, Ex. A at 92. Thus, he “always knew [he] had that money to manage at the end of the month.” *Id.*

Stevens also held “relational” responsibilities with Avanti’s suppliers. *Id.* at 110. In that role, he would discuss outstanding sums Avanti owed to vendors, would commit to paying vendors, and would work with Mr. Nelson to make those payments. *Id.* at

110-14. Stevens also approved the release of payments to some vendors, negotiated partial payments with vendors, and directed Avanti employees on how payments should be made (partial or full) to vendors. *See id.* at 112-14; *see also* RA 15, A - 0178-0179, 0202. Finally, Mr. Stevens on at least one occasion asked Avanti's bank to ensure the company's gas tax liability was paid even if it meant another creditor was not paid. *See* RA 15, A - 0183; Ex. A at pp. 127-29 (“[C]ould you at least make the tax payment go through? . . . I was more concerned about the [gas tax] liability than Marathon being mad.”).

III. AVANTI'S UNPAID TAX LIABILITY.

Even before Avanti had financial trouble, Mr. Stevens was charged with running Avanti. As Mr. Stevens explained, when “things are going well, it is cruise control . . . it is just a process” to operate Avanti. RA 15, Ex. A at pp. 59-60; *see also Id.* at 97-98 (describing decisions when “cash wasn't tight” or “cash is going to be tight”).

Avanti was behind in payments to its critical vendors from 2007 up until its bankruptcy petition. It was in arrears with its main snack/beverage supplier since 2007. RA 15, A - 0208. Avanti was also behind in payments to its primary gas supplier, Marathon Oil. *Id.* Mr. Nelson and Mr. Stevens discussed options to manage the debt to Marathon, and Mr. Nelson explained that they should “short” payments to vendors according to the weekly cash budget. RA 15, Ex. A at 202; *see also* A - 0230.

In September 2008, Mr. Stevens continued to negotiate payment terms with suppliers on Avanti's debts. For example, on September 11, he committed to paying the snack and beverage supplier “85-95k,” although he would work with “whatever number

we can put together” once the Consultant cautioned him “about committing the full \$95,000 just now.” RA 15, A - 0179. Shortly thereafter, Stevens was “able to defer the 50k additional paydown [to the beverage/snack supplier] until next week” when the Consultant cautioned that Avanti may not have the funds that week to pay the amounts committed to both Marathon and the beverage/snack provider. *Id.*, A - 0180. By the end of the month, Stevens and Nelson had to manage a gas tax debt with the Marathon and the beverage/snack supplier debts. The three men, Mr. Stevens, Mr. Nelson, and the Consultant, tried to juggle these three creditors and with the limited amount of money available to them. The three relied on timing of payments (“float” talked about below) and shorting payments to these main creditors.

[The Consultant] MN Gas Tax called today.

Pam called, left a v-m, and my return call to her was a v-m.

Told her that we intended to make the August payment in two ACH's and would check the second, missing one. [Stevens] has a good suggestion. He is planning on \$300,000 to Sam's Club; currently 50-50-50 clearing this week and 150 clearing next week. He could push the full \$300[000] into clearing next week thereby freeing up \$300[000] of the \$325[000] for MN Gas Tax. By the time we get to Tue next week, it's the same 300+300 in the [cash flow].

[The beverage/snack supplier]. Has written off 1/2 of the A/R. Said they are not prepared to standstill and receive nothing if we go to another vendor for service. Also not prepared to ship without getting \$50,000 per closed store and wire payments.

[Nelson] Can [Stevens] push the full 300k and get the same product into the stores this week and be in stock? Assuming we postpone the reimbursements due [Good Time Stores] this might work.

[Stevens] The only bad news here is the full 300k would hit at once, probably Monday or Tuesday. If we do not go back to [the beverage/snack supplier] or same day wires, we can run with the float. Bigger issue is at

some point we will need to work with someone to deliver the stores directly. That may require working back some of the float we gain right now.

RA 15, A - 0184-0185.⁴ In November, 2008, the Consultant negotiated payments on Avanti's gas tax liability, and advised Stevens and Nelson that the Department of Revenue "expects \$85,000 ACH payment on Monday 11/10 and additional payments on successive Mondays until Oct Gas Tax is full paid on 11/23." RA 15, A - 0188.

On December 5, 2008, the Department of Revenue notified Mr. Stevens, as Avanti's representative, that "the date for filing and paying October 2008 tax liabilities has come and gone with no filing and no payment." The November agreement was "in default," and the Department of Revenue therefore notified Avanti that its Petroleum license would be suspended at the end of the month. RA 15, A - 0189. Stevens then reached a new agreement with the Revenue Department, and advised Nelson and Lovejoy that Avanti owed Revenue \$100,000 by December 30, 2008. RA 15, A - 0231-0232.

In early January, 2009, Stevens forwarded a copy of Avanti's December petroleum tax filing to his Department contact. RA 15, A - 0190. Mr. Stevens believed that the Department of Revenue understood, based on the December discussions, that "the installment payments would include the nonpayment in December" so that in January, Stevens and the Department of Revenue could identify the "total amount due" and use that as a basis to "define what the repayment plan was going to be. So let's figure out what the number is and break it down in installments." RA 15, Ex. A at

⁴ Even this gas tax payment, once made, was "at risk" when deposits did not match anticipated cash flow. *See* RA 15, A - 0186-0187.

150 -51. Mr. Stevens therefore intended to continue his discussions with the Department of Revenue, to explore the terms of a repayment plan for Avanti's outstanding tax liability. *Id.*

By mid-January, a payment plan was reached, under which Avanti would make monthly payments of \$400,000 from January through July, until the tax debt (then \$2,400,000) was paid in full. See RA 15, A - 0196-0201. Stevens sent the payment agreement to Nelson, advising that he (Stevens) was "willing to sign the Agreement but would like [Mr. Nelson] to also sign" so they would be "aligned." See RA 15, A - 0233-0234. Nelson thus signed the payment agreement and Stevens signed the Electronic Funds Transfer Authorization, as President of Avanti. See RA 15, A - 0196-0201.

Stevens admits, however, that he had "zero confidence" that Avanti could abide by the January payment agreement. RA 15, Ex. A at p. 161. Accordingly, Avanti failed to comply with its payment obligations. By mid-February, Stevens returned to the Revenue Department, requesting "a payment plan that prevents or removes the ability for the State's exposure to grow as [Avanti] addresses the gas tax shortfalls." RA 15, A - 0203. Instead of the \$400,000 monthly payment, Stevens proposed "daily payments that approximate or average \$20,000/day." *Id.*; see also RA 15, Ex. A at 163 ("[T]his is kind of round 2 of the payment plan"). Because Avanti did not make the monthly payment required by the January Payment Agreement, and was not paying its current tax liability as it accrued, Revenue advised Avanti that the January Payment Agreement could be in default, which would put at risk Avanti's license eligibility. RA 15, A - 0235-0236. Mr. Stevens therefore continued to provide Revenue with information on "progress" made

that would “provide some strong benefit” to Avanti, and some “favorable feedback on another transaction.” *Id.* Mr. Stevens advised Mr. Nelson and the Consultant:

I had a good conversation with the State later in the afternoon. Whereas they are reluctant to commit to our daily payments, they did seem interested in our dealer progress, Walgreen discussions, gas margins, and the downsizing of the company. To this end, I believe it is crucial we stay on plan with them or risk disrupting their guarded optimism. Having said this, are we still on for the 60K payment today. Also, is the Marathon wire handled.

Id., A - 0204. The next day, the Revenue Department notified Avanti that the January Payment Agreement was in default, and Avanti’s license would therefore be suspended.

Id., A - 0237.

Stevens, Nelson, and the Consultant continued to discuss how to pay Avanti’s tax liability. When Mr. Nelson expressed concern that a \$40,000 payment would result in a negative balance, Mr. Stevens responded:

I would send them the 40k and hope we can cover it on Monday. This week the State was expecting 140k. If we don’t get at least 100k, that could be problematic given the amount of the shortfall and inconsistency in what and how we paid.

Id., A - 0239. Later that same day, Mr. Stevens advised the Department of Revenue that he was “researching the gas payments as we speak. I do see 40k going out tomorrow.”

Id., A - 0238. Given the impending license suspension, Mr. Stevens then proposed a meeting with Department and Avanti representatives. *Id.*, A - 0205.

After the meeting, Mr. Stevens and Mr. Nelson discussed possible terms to propose to the Department of Revenue. Mr. Stevens drafted and submitted a proposal, to be signed by Nelson, to the Department of Revenue, who declined to accept Avanti’s

proposal. *See* RA 15, Ex. A at p. 176; A - 0206-0208.⁵ In a letter dated April 24, 2009, Avanti, through its then counsel Brian McCool, asked the Department of Revenue to reconsider the repayment plan, and asked the Department of Revenue to “formally recognize that both [Avanti] and [T.C. Stores] are taxpayers responsible for the repayment of these petroleum taxes,” in reconsidering the repayment plan. App-50. On June 3, 2009, the Department of Revenue then placed tax liens on the property of T.C. Stores. App-43. On June 30, 2009, Avanti and T.C. Stores each filed for Chapter 11 bankruptcy protection. *See* Docket Nos. 09-34468, 09-34469, United States Bankruptcy Court, District of Minnesota; RA 15, A - 0141 at 3. Both Avanti and T.C. Stores bankruptcies were converted from a Chapter 11 to a Chapter 7, and are currently being liquidated. *Id.* The Department of Revenue released the tax liens on T.C. Stores on approximately January 26, 2010. App-40.

ARGUMENT

I. STANDARD OF REVIEW

“This court reviews findings of fact of the tax court to determine whether there was sufficient evidence to support the tax court’s decision.” *Igel v. Comm’r of Revenue*, 566 N.W.2d 706 (Minn. 1997) (*citing Benoit v. Comm’r of Revenue*, 453 N.W.2d 336, 339 (Minn. 1990)). “The tax court’s conclusions of law and interpretation of statutes are reviewed *de novo*.” *Chapman v. Comm’r of Revenue*, 651 N.W.2d 825, 830

⁵ Mr. Stevens testified that Exhibit 27 represented “a big changing of the guard,” because it marked the occasion when he would not sign the letter to the Revenue Department, and instead told Nelson to do so. RA 15, Ex. A at pp. 173-74.

(Minn. 2002). “Decisions that involve questions of fact are reviewed ‘to determine whether there is sufficient evidence to support the decision.’” *Sanchez v. Comm’r of Revenue*, 770 N.W.2d 523, 525 (Minn. 2009) (quoting *Miller’s Estate v. Comm’r of Taxation*, 59 N.W.2d 925, 926 (Minn. 1953)). “We review an order granting summary judgment to determine if the lower court erred in applying the law and whether any material facts are disputed.” *Sanchez* at 525; *Chapman* at 830.

The Tax Court entered summary judgment for the Commissioner. Mr. Stevens’ first argument on appeal is that the Tax Court should have allowed him to conduct additional discovery to develop his defense of estoppel against the Commissioner of Revenue. In short, Mr. Stevens argues on appeal that if the Tax Court would have allowed for him to take additional discovery, he could show that the Commissioner’s collection efforts should be estopped because the Commissioner released a lien against a related third-party, which affected Avanti’s bankruptcy. For the reasons below, summary judgment was proper.

II. THE TAX COURT CORRECTLY HELD MR. STEVENS PERSONALLY RESPONSIBLE FOR THE SALES TAX AND PETROLEUM TAX ASSESSED AGAINST AVANTI.

Minnesota Statute § 270C.56 allows the Commissioner of Revenue to assess liability for taxes, penalties, and interest on a person or persons, who has “control of, supervision of, or responsibility for filing returns or reports, paying taxes, or collecting or withholding and remitting taxes and who fails to do so...” Minn. Stat. § 270C.56, subd. 1 (2008).

In its Order, the Tax Court specifically found that Mr. Stevens was a “person” as defined in the statute, and that Mr. Stevens had joint control and supervision of paying Avanti’s taxes. Relator’s Appendix (“A”) 12, A - 73.

Courts apply the *Benoit* factors to determine whether someone is a responsible person under Section § 270C.56. The factors are:

1. The identity of the officers, directors and stockholders of the corporation and their duties;
2. The ability to sign checks on behalf of the corporation;
3. The identity of the individuals who hired and fired employees;
4. The identity of the individuals who were in control of the financial affairs of the corporation; and
5. The identity of those who had an entrepreneurial stake in the corporation.

Benoit 453 N.W.2d at 344.

The Tax Court, applying the *Benoit* factors, concluded that Mr. Stevens met every factor except an entrepreneurial interest. *See* A 12, A - 73-78. The Tax Court relied on undisputed evidence, that Mr. Stevens was the President of Avanti and had operations duties that included financial decision-making – not merely just a title as he contended before the Tax Court. Mr. Stevens, as President, was responsible for the day-to-day operations of Avanti, which included hiring and firing as well as negotiating with its creditors including the Department. It is undisputed by Mr. Stevens that he negotiated with the Department and would regularly develop the payment plans that Avanti would not adhere to. *See* A 12, A-78.

Mr. Stevens admits that he had check writing authority, but tries to circumscribe the authority by claiming that was only ministerial and that Mr. Nelson was the true authority. Relator Br. 37. Assuming arguendo that Mr. Stevens could write checks only when he was told, Mr. Stevens actively participated with Mr. Nelson in discussions of who to pay and when. It is undisputed that Mr. Stevens was an integral part of Avanti's financial decisions. Further, it is clear from the record that Mr. Stevens' ability to write checks was not just ministerial. The record established that Mr. Stevens authorized the gas purchases needed for the store operations. A 12, A - 65; RA 15, Ex. A pp. 59, 63-64. Mr. Stevens authorized or approved disbursements for purchases and debt payments, and acknowledged that there was no set limit on the amount he could authorize. A 12, A - 65; RA 15, A - 0178-0179, 0188, 0202. Together, Mr. Stevens and Mr. Nelson would review the proposed disbursements for the week and approve payments made based on expected cash revenues. A 12, A - 65; RA 14, A - 0122-0124, A - 0127, 0134; RA 15, Ex. A, at 204. Clearly, Mr. Steven's ability to use Avanti's bank accounts was more than ministerial.

Mr. Stevens admits he had the authority to hire and fire employees, and does not contest this factor.

Mr. Stevens contends, as an extension of his argument about check writing authority, that there is a triable question of fact regarding whether he controlled Avanti's affairs. The record supports the Tax Court's determination that no material fact dispute exists. The Tax Court aptly identified seven areas in which Mr. Stevens controlled Avanti's financial affairs. (1) he had authority to approve purchases for the daily

operations of the business – including petroleum, (2) Mr. Stevens communicated with Avanti’s creditors and provided input on the payment of creditors; (3) he advised Mr. Nelson regarding business decisions, including the sale of assets of Avanti to pay creditors; (4) Mr. Stevens negotiated compromises with Avanti’s creditors and participated in the business decisions on how to juggle Avanti’s debt load; (5) he worked with Avanti’s banker to ensure the tax payment would be made; (6) he entered valid contracts on Avanti’s behalf; and (7) he knew about the unpaid gas tax and participated in conversations regarding the unpaid tax, including negotiating terms to repay the petroleum tax. A 12, A - 77. These facts establish that Mr. Stevens was more than a mere puppet of Mr. Nelson; he was an active participant in the affairs and finances of Avanti. These facts are not contested by Mr. Stevens, and it provided sufficient basis for the Tax Court to conclude that Mr. Stevens had the requisite control or supervision over Avanti.

Finally, the Court determined that Mr. Stevens, with only a .99% stake in RM Group, did not have enough of an interest in Avanti to establish an “entrepreneurial stake” within the meaning of the *Benoit* factors. A 12, A - 78. However, because the *Benoit* factors are there to establish a broad view of a person’s knowledge and role in the financial matters of a company, it is not determinative if Mr. Stevens did not have an entrepreneurial stake in Avanti. “We do not take any one factor to be dispositive as to [an a]ppellant’s liability under Minn. Stat. § 270C.56.” *Paddock v. Comm’r of Revenue*, Docket No. 7856 at *3 (Minn. Tax Ct. Mar. 31, 2008).

Because the Tax Court correctly held that Mr. Stevens is personally liable for Avanti's unpaid debt, the Court should affirm the entry of summary judgment for the Commissioner.

III. ESTOPPEL IS NOT A DEFENSE TO PERSONAL LIABILITY.

Mr. Stevens argues that the Tax Court should have allowed him time to develop a defense of estoppel to prevent the Commissioner from collecting Avanti's tax debts from him. Mr. Stevens believes that the Commissioner is responsible for the failure of T.C. Stores' and Avanti's bankruptcies by removing a lien for the tax debt from T.C. Stores. The Tax Court correctly rejected this argument. Whether T.C. Stores is also liable for Avanti's tax debt and whether the lien on T.C. Stores was valid has no bearing on Mr. Stevens' liability. The Tax Court correctly recognized that even if Mr. Stevens was afforded additional discovery time, he could not succeed on an estoppel theory.

"This court has described estoppel as an equitable doctrine addressed to the discretion of the court and intended to prevent a party from taking unconscionable advantage of his own wrong by asserting his strict legal rights. To establish a claim of estoppel, plaintiff must prove that defendant made representations or inducements, upon which plaintiff reasonably relied, and that plaintiff will be harmed if the claim of estoppel is not allowed." *Brown v. Minnesota Dept. of Public Welfare*, 368 N.W.2d 906, 910 (Minn. 1985). Estoppel is not "freely applied" against the government. *See In Re Mesaba Aviation*, 258 N.W.2d 877, 880 (Minn. 1977). Even if it is applied, the public interest does not favor estoppel over the collection of taxes. "[P]ublic interest may override the equity established by reliance ... [and] the public interest involved here is

the collection of taxes.” *Dommert v. Cty. of Dakota*, No. C7-88-2872, 1988 WL 129691 (Minn. Tx. Ct., Dec. 2, 1988) (rejecting estoppel theory where taxpayer “did not act or change her position because of the advice given”); *see also* Minn. Stat. § 3.736, subd. 3(c) (2010) (state is immune from tort liability for “loss incurred in connection with the assessment and collection of taxes”).

The Tax Court determined that in this dispute, estoppel is not a remedy because as an equitable remedy rarely applied against the government, and the Commissioner did not induce Mr. Stevens to incur his tax debt. A 12, A - 68. The tax debt that is owed by Avanti was incurred and was due and owing far before Mr. Stevens filed the bankruptcy petitions. As the Tax Court held, “[h]ere, there is no evidence the Department misrepresented to Appellant he would not be personally liable for the unpaid taxes of Avanti if the lien against T.C. Stores remained intact.” A 12, A - 70.

Mr. Stevens submitted no evidence to suggest that the Department of Revenue misrepresented anything regarding its lien filings in order to induce Mr. Stevens to believe that he was not personally liable for Avanti’s tax liabilities. “There are no facts on the record, or any applicable law, to suggest a lien against T.C. Stores would ensure Appellant’s immunity from personal liability for T.C. Stores’ or Avanti’s unpaid taxes.” A 12, A - 70. “Appellant’s alleged reliance that any lien against T.C. Stores would preclude his personal liability in this matter was unreasonable.” A 12, A - 71.

Mr. Stevens asserts that the bankruptcy of T.C. Stores and Avanti was not successful and blames their failure on the Department of Revenue. Mr. Stevens apparently believes that if the bankruptcy was successful, it is a foregone conclusion that

all the tax liability would have been paid back by Avanti and T.C. Stores. What Mr. Stevens is liable for, and who else the Department may collect from, are two distinct and separate questions that have little relation to one another. Mr. Stevens has never asserted that he changed his position personally to avoid personal liability of taxes owed by Avanti – precisely because he could not. Mr. Stevens, as a responsible person with the requisite control over Avanti’s business, was assessable and potentially liable when Avanti signed and filed the tax returns without payment. Whether T.C. Stores is also liable for Avanti’s tax debt and whether the lien on T.C. Stores was valid has no bearing on Mr. Stevens’ liability.

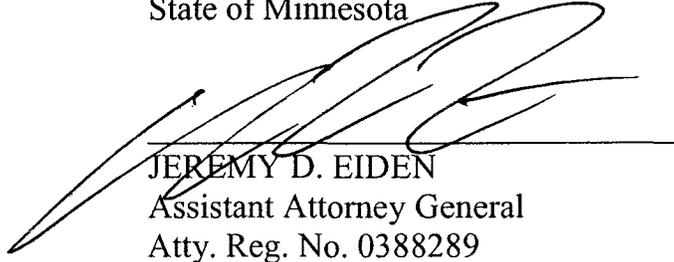
At no point was there any discussion with Mr. Stevens that the Department believed the liens or the bankruptcy would relieve Mr. Stevens of personal liability, and no information of that sort was relayed to Mr. Stevens, who did not personally change his position based on advice that was not given by the Department. The Tax Court therefore correctly entered summary judgment for the Commissioner and rejected Mr. Stevens’ efforts to pursue an estoppel defense.

CONCLUSION

The undisputed facts reflect that Mr. Stevens is personally liable for Avanti's unpaid tax liability. The Tax Court correctly entered summary judgment for the Commissioner. Mr. Stevens has offered no evidence nor compelling reason to overturn the Tax Court's decision, the Court should affirm the Tax Court.

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