STATE OF MINNESOTA TAX COURT

COUNTY OF RAMSEY REGULAR DIVISION

Steven Sadowski,

Appellant,

vs.

Commissioner of Revenue,

Appellee.

FINDINGS OF FACT
CONCLUSIONS OF LAW
ORDER FOR JUDGMENT

Docket No. 8299

Dated: April 18, 2012

The Honorable Sheryl A. Ramstad, Judge of the Minnesota Tax Court, heard this matter on February 27, 2012, at the Minnesota Judicial Center, St. Paul, Minnesota.

Christoper M. Daniels, Attorney at Law, represented the Appellant.

Sara Bruggeman, Assistant Attorney General, represented the Appellee, the Commissioner of Revenue.

The parties jointly submitted a Stipulation of Facts. In addition, the parties called witnesses to testify in this matter. Both parties submitted post trial briefs. The matter was submitted to the court for decision on April 9, 2012.

The Court, having heard and considered the evidence adduced at the hearing, and upon all of the files, records and proceedings herein, now makes the following:

FINDINGS OF FACT

1. Steven Sadowski ("Appellant") lent Michael Ogren ("Mr. Ogren") the sum of $3.5 million in early 2008.
2. As collateral for the loan, Mr. Ogren gave Appellant security interests in Club Rage, Inc. ("Club Rage"), a Minnesota sub-chapter S corporation, in which he owned 100% of the stock, as evidenced by, among other documents, a Loan Agreement, Stock Pledge and Security Agreement, and Promissory Note ("loan documents").
3. . In early July 2009, Mr. Ogren defaulted on the loan. On or about July 8, 2009, Appellant gave Mr. Ogren notice of the default pursuant to the loan documents.
4. Appellant exercised his rights under the Loan Agreement and Stock Pledge and Security Agreement, as evidenced by certain Notices and Actions dated July 8, 2009, and July 13, 2009.
5. On July 13, 2009, Appellant took certain corporate action to be appointed as sole director of Club Rage. By that corporate action, Appellant's daughter, Amanda Sadowski, was designated to be Appellant's on-site representative at Club Rage.
6. During the time that Appellant operated Club Rage from July 13 to on or about August 19, 2009, at which time the Club was closed, neither Appellant nor his daughter received full disclosure of or access to certain financial information and documentation concerning the company, including Club Rage's TCF Bank accounts and Club Rage's

sales and use tax liability for June to July 13, 2009.

7. In 2009, Club Rage, was a Minnesota taxpayer with tax obligations, including sales and withholding obligations, and was required to file monthly Minnesota sales and use tax returns.
8. The sales tax liability for Club Rage for June 2009 was $29,758.17 (including interest through March 12, 2010). The sales tax return and payment for June 2009 were due by July 20, 2009. Appellant did not file Club Rage's sales tax return or remit the collected sales taxes owed by Club Rage for June 2009.
9. The sales tax liability for Club Rage for July 1-16, 2009, was $33,644.88 (including interest through March 12, 2010).
10. On August 20, 2009, Club Rage's July 2009 sales tax return and payment were due. Sally Babcock, bookkeeper for Club Rage, informed Appellant of Club Rages' sales tax liability, but Appellant did not file or make any payments by the August 20th deadline. On October of 2009, Appellant paid the sales tax liability for Club Rage for August 2009 and for July 17-21, 2009, from Club Rage's Wells Fargo Bank accounts.
11. On July 20, 2009, Sally Babcock, withdrew the sum of $28,007.00 from an existing Club Rage account at TCF Bank. One check was made payable to Appellant in the amount of $18,000.00. A second check was made payable to Sally Babcock in the amount of $10,000.00.

12. On July 21, 2009, Appellant (or those working at his direction) deposited $18,000.00 from this withdrawal into two new Club Rage bank accounts opened at Wells Fargo Bank, N.A. These accounts were opened on July 20, 2009, by Appellant; one account was an operating account (into which Appellant deposited $17,900.00) and the second account was a payroll account (into which Appellant deposited $100.00).
13. Appellant was a fiduciary of Club Rage at the time the sales taxes Were due on July 20 and August 20, 2009
14. In October of 2009, Appellant filed and paid Club Rage's Minnesota sales tax liability incurred from July 17, 2009, until the business closed in August of 2009.
15. Appellant was personally assessed for Club Rage's unpaid sales tax liability under Minn. Stat. § 270C.56 for the tax period ending June 20, 2009, and for the tax period July 1-16, 2009, in an Order Assessing Personal Liability dated March 12, 2010, and upheld on August 18, 2010.
16. On November 2, 2012, Appellant filed a timely appeal with the Tax Court.

CONCLUSIONS OF LAW

The Order of the Commissioner of Revenue dated August 18, 2012, is hereby affirmed.

IT IS SO ORDERED. LET JUDGMENT BE ENTERED ACCORDINGLY. A STAY OF FIFTEEN DAYS IS HEREBY ORDERED. THIS IS A FINAL ORDER.

BY THE COURT,

Sheryl A. Ramstad, Judge
MINNESOTA TAX COURT

DATED: April 18, 2012

Memorandum

Background

At issue in this case is whether Stephen Sadowski ("Appellant") is personally liable for unpaid sales taxes collected by Club Rage, Inc. ("Club Rage") from June 1 through July 16, 2009, under Minn. Stat. § 270C.56. The Commissioner of Revenue ("Commissioner") found Appellant liable in an Order Assessing Personal Liability dated March 12, 2010, which was upheld on August 18, 2010 ("Order"). On November 2, 2010, Appellant filed a timely appeal. For the reasons set forth below, we find Appellant to be personally liable for Club Rage's failure to pay sales taxes for June 1, 2009, through July 16, 2009, and affirm the Order.

Facts

On March 18, 2008, Appellant lent $3.5 million ("Loan") to Zosoz, LLC. The Loan was personally guaranteed by Michael Ogren ("Mr. Ogren") and

secured by a pledge of 100% of the stock in Club Rage ("Stock Pledge"). The Stock Pledge allowed Appellant to, after an event of default under the Loan Agreement, exercise the voting rights of the stock and to sell the stock and use the proceeds to satisfy the Loan. As further security for the Loan, Mr. Ogren granted Appellant a right to buy his shares of Club Rage ("Option"). The Option also permitted Appellant complete access to Club Rage's books and records.

In early July, Mr. Ogren informed Appellant that Mark Ogren, Mr. Ogren's uncle, had taken over control of Club Rage in an attempt to divert the profits of Club Rage to himself and Mr. Ogren's mother. On July 8, 2009, Appellant sent Mr. Ogren a Notice to Default after he defaulted on the Loan by failing to make payments when due. To determine whether any value could be recovered from Club Rage and to stop Mark Ogren's management of Club Rage, Appellant exercised his voting rights of the shares of Club Rage that same date. On July 13, 2009, Appellant also removed all directors and officers of Club Rage, including Mr. Ogren, and appointed himself sole director and president of Club Rage. After appointing himself president and director, Appellant designated himself and his daughter, Amanda Sadowski ("Ms. Sadowski"), as the only people with authority to take certain actions on behalf of Club Rage. Among these actions were: (1) paying any debts of Club Rage other than bona fide trade debts; (2) hiring and firing employees; (3) communicating with outsiders regarding Club Rage's finances; and (4) taking any action that would or might threaten the continuation of Club Rage's liquor license. Appellant and Mr. Ogren attempted to install Ms. Sadowski as manager of Club Rage.

On July 17, 2009, Appellant discovered that Mark Ogren had filed an unlawful detainer action against Club Rage. Appellant contacted the police. Based on the legal documents Appellant had executed, he convinced the police that he was in charge of Club Rage. On July 17, 2009, Appellant began operating Club Rage and designated his daughter, Ms. Sadowski, as his representative. On July 20, 2009, Appellant, Ms. Sadowski, Mr. Ogren, and Sally Babcock ("Ms. Babcock"), Club Rage's bookkeeper, had a meeting to discuss Club Rage. At the meeting, Mr. Ogren informed Ms. Babcock that Appellant would be operating Club Rage. Mr. Ogren also instructed Ms. Babcock to withdraw $28,000 from the Club Rage bank accounts and to give it to Appellant to open a new bank account at Wells Fargo.

Since Mr. Ogren no longer had access to the TCF Bank accounts, it was necessary for Ms. Babcock to withdraw the money from TCF. Other funds, totaling $25,917.42, remained on deposit in the TCF accounts to make payroll on July 20, 2009. Ms. Sadowski was aware that payroll would be made on July 20th and that it would come from the TCF accounts. Also on July 20th, Ms. Babcock withdrew the sum of $28,007.00 from the Club Rage TCF account and gave $18,000.00 of this amount to Ms. Sadowski. With this money, Ms. Sadowski opened new Club Rage operating and payroll accounts at Wells Fargo, on which Appellant and Ms. Sadowski had signature authority. The other $10,000.00 Ms. Babcock used to make payments for an event held that night at Club Rage. Ms. Sadowski deposited the proceeds from the July 20th Club Rage event into the Wells Fargo account. From July 20, 2009, forward, the Wells

Fargo accounts were the main operating and payroll accounts of Club Rage, but the TCF accounts remained open because electronic payments continued to be deposited into the accounts. Periodically at Ms. Sadowski's instruction, Ms. Babcock withdrew funds from these accounts and gave them to Ms. Sadowski. Ms. Sadowski used the Club Rage funds in the Wells Fargo accounts to make payments to various creditors of Club Rage.

On July 20, 2009, Club Rage's monthly sales tax return and remittance for June 2009 was due. Appellant did not file Club Rage's sales tax return or remit the collected sales taxes owed by Club Rage for June 2009.

After the July 20, 2009 meeting, Mr. Ogren and Ms. Sadowski jointly operated Club Rage. Ms. Babcock reported to both Mr. Ogren and Ms. Sadowski. Ms. Babcock continued to keep the books and records for Club Rage and presented Ms. Sadowski with invoices and lists of Club Rage's payables. Since there were not enough funds in the accounts to pay all the creditors, Ms. Sadowski decided which creditors to pay. Ms. Babcock calculated the sales tax that was required to be remitted to Minnesota and kept the file at Club Rage. On July 31, 2009, Appellant discovered that Ms. Babcock had withdrawn money from the TCF accounts, which had been set aside by Appellant to pay bills, and had given it to Mr. Ogren. Appellant immediately fired Mr. Ogren, but took no disciplinary action against Ms. Babcock, continuing to employ her as Club Rage's bookkeeper.

On or about August 19, 2009, Appellant closed Club Rage after an unlawful detainer action was filed against it. On August 20, 2009, Club Rage's

July 2009 sales tax return and payment were due. Ms. Babcock informed Appellant of Club Rage's sales tax liability, but Appellant did not file or make any payments by the August 20th deadline. In October of 2009, Appellant paid the sales tax liability for Club Rage for August 2009 and for July 17-31, 2009, from Club Rage's Wells Fargo Bank accounts.

The Commissioner personally assessed Appellant for Club Rage's unpaid sales tax liability under Minn. Stat. § 270C.56 for the tax period ending June 30, 2009, and also for the tax period July 1-16, 2009, in an Order Assessing Personal Liability dated March 12, 2010, and upheld on August 18, 2010, by an Order Denying Appeal ("Order"). Appellant filed a timely appeal of the Order on November 2, 2010.

Standard of Review

Orders of the Commissioner are presumed correct and valid.[1] The taxpayer bears the burden of demonstrating clearly that the challenged Order is incorrect.[2] The taxpayer bears this burden because the taxpayer controls the records that could show the Commissioner clearly erred in his assessment.[3]

Minnesota Statute Section 271.06, subd. 6 provides that the Tax Court shall hear every appeal *de novo*. A trial *de novo* means "a case shall be tried the same as if it had not been tried before…" [4] In addition, upon a trial *de novo*, a

[1] *See* Minn. Stat. § 270C.33, subd. 6 (2010); Jansen v. Commissioner of Revenue, Docket Nos. 7695 et al. (Minn. Tax Ct. June 2, 2005).
[2] Dreyling v. Commissioner of Revenue, 753 N.W.2d 698, 701 (Minn. 2008); *see also* Wybierala v. Commissioner of Revenue, 587 N.W.2d 832, 835 (Minn. 1998).
[3] See F-D Oil Co., Inc. v. Commissioner, 560 N.W.2d 701, 707 (Minn. 1997).
[4] Stronge & Lightner Co. v. Commissioner of Taxation, 36 N.W.2d 800, 807 (Minn. 1949).

taxpayer may introduce evidence. The decision of the court "may or may not be based upon the same evidence as the commissioner had."[5]

Statutory Authority

Pursuant to Minn. Stat. §270C.56 (2009), a person who "has the control of, supervision of, or responsibility for filing [sales tax] returns or reports, paying [sales] taxes, or collecting or withholding and remitting [sales] taxes, and who fails to do so…[is personally] liable for the payment of [the] taxes…." [6] When more than one person is responsible for the unpaid tax liability, the Commissioner may assess one responsible person, all of the responsible persons, or some of the responsible persons.[7]

The Minnesota Supreme Court has used a five-factor test that focuses on the person or persons who have the authority and responsibility to see that a company's taxes are paid.[8] These Benoit factors are:

a. the identity and duties of the company's officer, directors, and stockholders;
b. the check writing ability within the corporation;
c. the identity of individuals who hired and fired employees;
d. the identity of those who were in control of the corporation's financial affairs; and
e. the identity of those with an entrepreneurial stake in the corporation.[9]

The test "is a functional one which focuses on those persons who have the power and responsibility to see that the taxes are paid.[10]

---

[5] Id.
[6] Minn. Stat. §270C.56 (2009).
[7] See, Minn. Stat. § 290.92, subd. 1(4) (2008); Minn. Stat. § 270C.56, subd. 4.
[8] See, Benoit v. Commissioner of Revenue, 453 N.W.2d 336, 342 (Minn.1990); see also, Larson v. Commissioner of Revenue, 581 N.W.2d 25, 28-39 (Minn. 1998) (acknowledging that statutory control standard is dispositive, but noting that the Benoit analysis remains "informative").
[9] Benoit, 453 N.W.2d at 344.
[10] Carlson v. Commissioner of Revenue, 517 N.W.2d 48, 52 (Minn. 1994). Although Carlson applied the pre-1990 statutory personal liability standard, the Minnesota Supreme Court has

Analysis

It is undisputed that Appellant took over responsibility for Club Rage's operations on July 17, 2009, and operated Club Rage to on or about August 19, 2009, at which time the Club was closed.[11] However, Appellant contends that he was unable to gain true control of the company—that is, he never had control of Club Rage's TCF Bank accounts and did not obtain sufficient information about the club's finances from any sources, including from Mr. Ogren or Ms. Babcock. Thus, Appellant claims to have had no knowledge that any sales tax was owing or that there was money in the TCF Bank account to pay the sales tax. Since Ms. Babcock was the only one at Club Rage to ever report or pay taxes, and she did not inform Appellant or his daughter that Mr. Ogren had directed her not to pay them for June 2009, Appellant contends that he was not a responsible party for the sales tax liability under the statute. In short, Appellant argues that only the old management is responsible for payment of sales taxes prior to when he took control of Club Rage on July 13, 2009.

The Commissioner asserts that Appellant, as the only officer and director of Club Rage on and after July 13, 2009, was the only person with the legal authority to file tax returns and pay taxes for June and July 2009. Relying upon Igel v. Commissioner of Revenue,[12] the Commissioner claims that lack of accurate financial data is insufficient to absolve an officer and director of their duty to accurately report and remit sales taxes. We agree.

---

recognized that the earlier standard is "virtually identical" to the currently applicable statute, Minn. Stat. § 270C.56. See, Larson, 581 N.W.2d at 29.

[11] Tr. at 128-32.

[12] 566 N.W.2d 706 (Minn.1997).

The Minnesota Supreme Court in Igel imposed personal liability on an officer and director who believed that sales taxes had been paid.[13] In that case, the general manager, who was primarily responsible for all financial recordkeeping, also prepared and was responsible for submitting all sales tax and withholding tax returns to the tax authorities. When the company began having financial problems, the general manager indicated that all sales and withholding taxes had been paid, which was corroborated by the company's financial reports and records. However, since the checks accompanying the returns were not signed, the state subsequently returned them to the company.

Mr. Igel did not learn that the checks sent with the various tax returns had not been signed until after he left the company. Rejecting Mr. Igel's argument that he should not be held personally liable for the unpaid sales tax because he acted as a prudent businessperson and relied upon the general manager to handle tax matters, the Minnesota Supreme Court held that as a corporate officer of the company, Mr. Igel was personally liable for the unpaid sales taxes. The Court stated that:

> The statute is clear on its face—when tax owed by a business entity is not paid, a person…becomes personally liable for that unpaid tax...Neither the statute, nor the dictionary, nor common sense dictate the inclusion of a "best efforts" defense for failure to pay tax. [The statute] imposes a duty on certain persons to ensure that a company's taxes are paid. When taxes are not paid, such persons are liable for the delinquency.[14]

Igel also held that at the time the sales tax was collected, the corporate officer became a trustee for the sales tax fund. Consequently, the collected sales taxes

[13] Id.
[14] Id. at 709.

never became property of the taxpayer but instead were held in trust by the taxpayer of the state. As the Igel court pointed out, the statute unambiguously imposes personal liability on certain persons who owe a duty to ensure tax payments are made, regardless of the level of care exercised in the course of that duty.

In contrast, Appellant relies upon Peterson v. Commissioner of Revenue,[15] to support his position that individuals are only personally liable for sales taxes collected after the individual becomes a responsible person. However, this issue was not presented to the Minnesota Supreme Court in that case. In Peterson, the Court did not consider whether appellant should be liable for distributing collected sales taxes without leaving sufficient funds to pay the corporation's outstanding sales tax liability. Peterson is also distinguishable from this case because appellant was neither an officer nor a director of the corporation and lacked signature authority on the corporate accounts.[16]

The Benoit Factors

We next turn to an analysis of the Benoit factors to determine whether Appellant satisfies the criteria for being a responsible party within the meaning of the statute. First, we consider whether Appellant was an officer, director, or stockholder and what his duties were. It is undisputed that on and after July 13, 2009, Appellant was the only director and officer of Club Rage and had exercised all the voting rights of the sole shareholder. After removing all directors and officers of Club Rage on that date, Appellant designated himself and his

[15] 556 N.W.2d 710 (Minn.1997).
[16] Id. at 713.

daughter, Amanda Sadowski, as the only people with authority to take the following actions on behalf of Club Rage: (1) paying any debts of Club Rage other than bona fide trade debts; (2) hiring and firing employees; (3) communicating with outsiders regarding Club Rage's finances; and (4) taking any action that would or might threaten the continuation of Club Rage's liquor license.[17] Furthermore, Appellant's designee, his daughter, managed the operations of Club Rage. Her duties included paying all invoices and accounts payable.[18]

Based upon these facts, we find that Appellant meets the first Benoit factor.

The second Benoit factor involves the check writing authority within the corporation. Once Appellant took over Club Rage, the Wells Fargo operating and payroll accounts were Club Rage's primary accounts. Appellant and his daughter had signature authority on these accounts that his daughter had opened.[19] Ms. Babcock, a Club Rage employee working at the direction of Appellant's daughter, possessed check writing authority on Club Rage's TCF Bank accounts. Appellant's daughter instructed Ms. Babcock to write checks on the TCF Bank accounts to allow her to deposit the funds in the Wells Fargo Bank accounts.[20]

Since Appellant and his daughter or those acting at their direction had check writing authority on all of Club Rage's accounts, we find Appellant meets the second Benoit factor.

---

[17] Ex. 7, Action Without a Meeting of the Sole Shareholder of Club Rage, Inc.; Ex. 20, Email from N. Polstein to A. Goins (August 14, 2009); Tr. at 19.
[18] Tr. at 37, 73, 146, 149, 188-89.
[19] Joint Stipulation of Facts ¶9; Tr. at 72, 128, 167.
[20] Tr. at 117, 195.

Third, under Benoit, we consider the identity of individuals who hired and fired employees. It is undisputed that only Appellant had the ability to hire and fire employees after July 13, 2009. He exercised his firing authority by firing Mark Ogren and having police escort him off the premises on July 17, 2009, and also by firing Mr. Ogren on July 30, 2009.[21] Additionally, he exercised his hiring authority by appointing his daughter to manage Club Rage.[22]

Thus, we find that Appellant satisfies the third Benoit factor.

The fourth Benoit factor requires us to examine is who had control of, and responsibility for, the financial affairs of Club Rage. Again, it is undisputed that on, and after, July 17, 2009, Appellant had control of Club Rage's financial affairs. Not only were Appellant and his daughter the only people with the requisite legal authority to act on Club Rage's behalf, but acting under Appellant's direction, his daughter decided which of Club Rage's debts would be paid from the bank accounts after July 17, 2009.[23]

We, therefore, find that Appellant satisfies this factor because he had the requisite control and responsibility for Club Rage's financial affairs.

Finally, Benoit's fifth factor considers whether Appellant possessed an entrepreneurial stake in Club Rage. After July 17, 2009, Appellant held a security interest in 100% of Club Rage's shares, entitling him to all profits from the sale of stock or any distribution made to stockholders. Although Mr. Ogren continued to be a shareholder, Club Rage's economic success after July 17, 2009, stood to benefit only Appellant.

[21] Tr. at 27, 63, 130.
[22] Ex.8; Tr. at 38.
[23] Tr. at 187-88.

Therefore, we find that Appellant meets the fifth Benoit factor inasmuch as he possessed the primary entrepreneurial stake in Club Rage.

Responsible Person and Personal Liability

Because Appellant satisfies all of the Benoit factors, we find he became a responsible person for Club Rage on and after July 17, 2009, and was thus responsible for filing Club Rage's tax returns and remitting Club Rage's June and July 2009 sales taxes. Under Minnesota law, he is personally liable for his failure to do so. Appellant became the sole officer and director of Club Rage prior to July 20, 2009—the day when Club Rage's sales tax returns and remittance for June 2009 was due. As such, he was responsible for ensuring that the sales taxes Club Rage had collected for that and later periods were remitted to the state. When Appellant took authority for Club Rage, the returns had not yet been filed and the taxes not yet remitted. Thus, Appellant inherited the responsibility for ensuring that Club Rage complied with its sales tax reporting and remitting obligations. Having failed to file the returns or remit the taxes owed for June 1-July 16, 2009, he is now personally liable for his failure to do so.

Appellant contends that only Mr. Ogren individually was responsible for filing Club Rage's June and July 2009 tax returns and paying Club Rage's tax liability accruing during this period. However, under the corporate documents drafted and executed by Appellant, Mr. Ogren lacked the requisite authority to file a tax return on Club Rage's behalf without Appellant's permission.[24] Mr. Ogren also lacked access to Club Rage's bank accounts—both those located at TCF

[24] Exs. 7, 8, 20.

and Wells Fargo Banks— and Appellant had prohibited from him making such payments.[25]

Consequently, we cannot agree with Appellant's contention. He was a fiduciary at the time the taxes were due on July 20 and August 20, 2009. To absolve Appellant from the duty to file Club Rage's tax returns or pay taxes once he assumed control of the business would lead to a result whereby corporations could be absolved of their duties by virtue of changing their officers and directors. Here, the obligation to file tax returns and remit sales tax remained in the first instance with Club Rage rather than Mr. Ogren, who had been forcibly removed as an officer and director of Club Rage. Under Minn. Stat. § 289A.31, Appellant was a fiduciary who voluntarily disbursed Club Rage's funds on deposit on July 17, 2009, when he took over. As an officer and director, he was also a fiduciary of Club Rage under Minn. Stat. §§ 302A.251, 302A.36. When Appellant took over Club Rage, there was $53,917.42 on deposit in Club Rage's accounts. Instead of choosing to use these funds to pay Club Rage's outstanding sales tax liability for July 1 through July 17, 2009, Appellant's daughter used these funds to pay other liabilities of the Club. Appellant cites no authority in support of his argument that because he lacked knowledge of the outstanding tax liability, he had no duty to remit Club Rage's collected sales taxes to Minnesota. Under Minnesota law, Appellant's claim of lack of knowledge does not absolve him of his fiduciary duty to remit the collected sales taxes to the state. Minnesota statutes imposing personal liability for sales taxes do not require that the individual act with knowledge or willfulness.[26] The Minnesota Supreme Court in

[25] Tr. at 70, 154-55.

Igel rejected imposing a knowledge or willfulness element onto the personal liability statute.[27]

Lastly, Appellant's reliance upon the existing funds doctrine elucidated in Slodav v. United States[28] to support his position that lacking willfulness, he cannot be held personally liable for failure to pay over trust funds collected prior to his assuming control of Club Rage is misplaced. In Slodav, new management had taken over a business with preexisting withholding tax liabilities and no funds on deposit.[29] The Supreme Court found that the new management did not violate the pay-over requirement of the federal penalty statute by using after-acquired funds to pay other expenses of the business rather than the withholding liability because there was no nexus between the funds dispersed and the debt owed.[30] However, the Court also indicated that, had the business been in possession of funds at the time the new management took over, the new management would have violated the federal statute by using those preexisting funds to pay debts other than the withholding tax liability.[31] Thus, Slodav supports the Commissioner's position here inasmuch as it held that new management is liable for its use of preexisting trust funds to pay other creditors of the business. Moreover, unlike Slodav, Appellant received and disbursed trust funds which have a nexus with the June and July 2009 sales tax periods. When Appellant took over Club Rage, there was $53,924.42 on deposit in Club Rage's bank

---

[26] See, Minn. Stat. §§ 270.56, 289A.31.
[27] Id., 566 N.W.2d at 709-10.
[28] 436 U.S. 238 (1978).
[29] Id. at 242.
[30] Id. at 256.
[31] Id. at 259.

accounts, attributable to periods prior to when Appellant took over Club Rage. Appellant failed to use these funds on deposit to pay Club Rage's outstanding tax liability. Unlike the federal statute[32] at issue in Slodav, Minnesota has declined to impose a willfulness requirement.[33] Thus, we find Appellant's reliance upon Slodav, and his argument that he lacked willfulness, to be without merit.

Conclusion

For all of the foregoing, we affirm the Order dated April 18, 2010. Appellant is personally liable for Club Rage's unpaid sales taxes from June and July of 2009.

S. A. R.

[32] See 26 U.S.C. § 6672.
[33] Igel, 566 N.W.2d at 709-10.