

STATE OF WISCONSIN
TAX APPEALS COMMISSION

DEAN SMITH,

DOCKET NO. 10-S-110
DOCKET NO. 10-W-111

Petitioner,

vs.

RULING AND ORDER

WISCONSIN DEPARTMENT OF REVENUE,

Respondent.

LORNA HEMP BOLL, CHAIR:

This case comes before the Commission for decision on Petitioner's Motion for Summary Judgment and Respondent's Motion for Partial Summary Judgment. The Petitioner, Dean Smith, appears *pro se* in this matter. The Respondent in this matter, the Wisconsin Department of Revenue ("the Department"), is represented by Attorney Axel F. Candelaria Rivera. The Department has filed a brief with an affidavit with relevant exhibits. The Petitioner has agreed to the introduction of the exhibits attached to the Affidavit of Attorney Candelaria, indicating that the Petitioner had provided many of them to the Department.¹

¹ Petitioner's May 5, 2010, petition claims there are documents "notarized and dated November 2005" which show that the Petitioner had no managerial responsibility after that time; however, no such documents have been submitted by either party. Additionally, we will consider the assertions set forth in Petitioner's various letters but will discount those which are unsupported in the record.

The issue in this case involves Petitioner's liability for taxes for Smith Bros. Ford, Inc. ("SBFI"), specifically sales taxes for the monthly time periods ending November 30, 2006, through September 30, 2007 (excluding June 2007²), and withholding taxes for the semi-monthly periods beginning January 1, 2007³, through September 30, 2007. The assessments in question include the time frame addressed in the required annual 2006 WT-7 Reconciliation⁴ due January 15, 2007.

For the reasons stated below, we find the Petitioner responsible for a portion of the time in question and therefore grant partial summary judgment to the Department.

DECISION

In this case, the Department of Revenue issued assessments against Mr. Smith, the Petitioner, for unpaid sales and withholding taxes, alleging that the Petitioner was a "responsible person" under Wis. Stats. §§ 71.83(1)(b)2 and 77.60(9). Petitioner denies being a person responsible for the unpaid taxes, claiming that he had

² Department's Notice of Amount Due lists Begin Date as November 1, 2006, and End Date as September 30, 2007; however, the final page of the Notice explains the calculations in the Notice are "based on unpaid delinquent sales tax, interest and penalty owed by SMITH BROTHERS FORD INC, sellers permit number 456-0000253518-04 for periods ending November 30, 2006, December 31, 2006, January 31, 2007, February 28, 2007, March 31, 2007, April 30, 2007, May 31, 2007, July 31, 2007, August 31, 2007, September 30, 2007.

³ Department's Notice of Amount Due lists Begin Date as January 1, 2006 and End Date as September 30, 2007. The final page of the Notice explains the calculations in the Notice are "based on unpaid delinquent withholding tax, interest and penalty owed by SMITH BROTHERS FORD INC, sellers permit number 456-0000253518 for periods ending January 1, 2006, January 15, 2007, January 31, 2007, February 15, 2007, February 28, 2007 . . . and continuing semi-monthly through September 30, 2007. Because time periods do not end on the first of the month, we believe this date is a beginning date consistent with the top of the assessment form. The Commission is further inclined to believe these periods are all contiguous and thus the first time period for which non-payment is assessed begins January 1, 2007. If there actually is an assessed pay period in early 2006, it is addressed in this decision as well.

⁴ WT-7 Reconciliation Reports are annual summary report required of employers which set forth the amount of taxes withheld; the report includes computations of additional amounts due or overpayments due to be refunded.

relinquished all duties related to SBFI prior to the assessment periods.

FINDINGS OF FACT

I. Procedural Facts

1. For the monthly periods ending November 30, 2006, through September 30, 2007 (possibly excluding June 2007), Smith Bros. Ford, Inc., did not pay sales taxes.

2. By Notice of Amount Due, dated April 17, 2009, the Department issued an assessment to Petitioner, as an officer, employee, or other responsible person, in a total amount due for sales tax periods beginning November 1, 2006, and ending September 30, 2007, as follows:

Tax	\$247,715.04
Interest	\$94,428.19
<u>Penalty</u>	<u>\$38,209.04</u>
Total	\$380,352.27

(Department's Exhibit 1.)

3. For the semi-monthly periods beginning January 1, 2007, through the period ending September 30, 2007, Smith Bros. Ford, Inc., did not submit withholding taxes for its employees.

4. By Notice of Amount Due, dated April 17, 2009, the Department issued an assessment to Petitioner, as an officer, employee, or other responsible person, in a total amount due for withholding tax for the semi-monthly periods ending January 1, 2007, and ending September 30, 2007 (excluding June 2006), as follows:

Tax	\$41,568.97
Interest	\$14,331.05

<u>Penalty</u>	<u>\$6,926.02</u>
Total	\$62,826.04

(Department's Exhibit 5.)

5. Petitioner filed a timely Petition for Redetermination on June 15, 2009, with regard to both assessments. (Department's Exhibit 2.)

6. By notice dated March 10, 2010, the Department denied Petitioner's Petition for Redetermination regarding the sales tax liability, stating, "It has been determined that you, as an officer of Smith Brothers Ford, Inc. were a responsible person subject to tax, interest and penalties due that you are being held responsible for." (Department's Exhibit 3.)

7. By notice dated March 10, 2010, the Department denied Petitioner's Petition for Redetermination regarding the withholding tax liability, stating, "It has been determined that you, as an officer of Smith Brothers Ford, Inc. were a responsible person subject to tax under Wis. Stat. § 71.83(1)(b)2 (2007-08). The attached notice of assessment represents withholding tax, interest and penalties due that you are being held responsible for." (Department's Exhibit 7.)

8. On May 6, 2010, Petitioner timely filed a Petition for Review with the Wisconsin Tax Appeals Commission with regard to both assessments. (Department's Exhibit 8.)

II. Evidentiary Findings

1. The relevant time periods giving rise to potential tax liability in these cases together span from November 1, 2006, through September 30, 2007.⁵

2. Throughout this case Petitioner has claimed to have lost authority to pay the taxes at various times prior to the assessment periods in question.⁶ However, Petitioner's letters of February 2011 and May 2011 in reply to the Department's motion clarify that his objection to being considered a responsible party begins in November 2006. (Petitioner's letters of May 6, 2011, and May 31, 2011.)

3. Petitioner served as president of SBFI in 2003, 2004, and 2005, signing the company's tax returns as president during those years. (Respondent's Exhibits 25, 26, and 27.)

4. As of the beginning of 2006, Petitioner continued to serve as president of SBFI. On January 31, 2006, Petitioner executed a Stock Subscription and Deferral Agreement, which specifically stated "Dean A. Smith is the president of the corporation." (Department's Exhibit 9.)

5. The Stock Subscription and Deferral Agreement, dated January 31, 2006, provided for the hiring of Thomas A. Nitschke ("Mr. Nitschke") as general manager

⁵ Despite the several different time frames put forth by the Petitioner, Petitioner's letter of May 31, 2011, clarifies, "[T]his is not a case of what happened before November 2006." We agree that the contested time frame spans from November 2006 – September 2007. As will be explained later in this opinion, we find no genuine issues of fact as to Petitioner's responsibility for taxes prior to the assessed periods, including early January 2006.

⁶ Petitioner's June 2009 Petition for Redetermination states he "was relieved of all managing authority and responsibility beginning January 1, 2006." (Department's Exhibit 2.) His letter/petition to the Commission of May 5, 2010, stated he did not have authority after November 15, 2005. He has also asserted that his authority ended November 13, 2006 in Petitioner's letter of February 26, 2011, and his handwritten note on an agreement on the Voluntary Surrender Agreement dated February 7, 2007.

of SBFI and described a process by which one year later (January 1, 2007), thirty percent ownership of the corporation would vest in the general manager. (Department's Exhibit 9.)

6. The Stock Subscription and Deferral Agreement bestowed managerial duties upon Mr. Nitschke "relating to the overall management of the corporation," including such financial activities as check-writing. (Department's Exhibit 9.)

7. In a letter dated February 27, 2006, signing as president of SBFI, Petitioner informed River Valley State Bank that he had delegated banking authority to Mr. Nitschke. (Department's Exhibit 10.)

8. The Stock Subscription and Deferral Agreement provided in part that Petitioner was required to approve any indebtedness in excess of \$10,000. (Department's Exhibit 9.) The Department has submitted bank records showing December 2006 debits in excess of \$10,000 debited from SBFI's various bank accounts, for which Petitioner was a signatory. (Department's Exhibits 18, 19, 22, and 23.) In keeping with the terms of the agreement, these expenditures would have required approval from the Petitioner.

9. Petitioner signed checks on behalf of SBFI during November and December of 2006, January of 2007, and as late as February 2, 2007. (Respondent's Exhibits 22, 23, and 29.)

10. Petitioner has submitted a list of 14 points from a meeting allegedly held on December 6, 2006. (Petitioner's attachment to his submission dated May 31, 2011.)

The unauthenticated unsigned document does not state who attended the meeting, nor when or by whom the list was created.

11. On February 7, 2007, Petitioner signed a legal agreement with Mid-Wisconsin Bank as president of SBFI. That agreement required him to relinquish keys, assets, passwords, and other incidents of ownership to Mid-Wisconsin Bank on February 9, 2007.

12. In a resolution dated February 9, 2007, Petitioner resigned as president of SBFI but remained a stockholder and director on the Board of Directors of SBFI. (Department's Exhibit 13.)

13. Pursuant to the resolution dated February 9, 2007, Petitioner as sole director of the Board of Directors of SBFI elected his successor, Thomas A. Nitschke, as president of SBFI. The Resolution by which Petitioner elected Mr. Nitschke as president stated, "only persons designated by the President shall have authorization to sign checks on behalf of the corporation." (Department's Exhibit 13.) The resolution also re-elected Petitioner as director of SBFI.

14. On September 24, 2010, Mr. Nitschke testified in the related matter of *Mid-Wisconsin Bank v. Richard Smith*, Case No. 07-CV-458, in the Circuit Court for Marathon County. A partial transcript⁷ has been submitted in which Mr. Nitschke appears to admit that it was his decision at some point, as general manager, to discontinue paying sales and withholding taxes. (Department's Exhibit 16.) The transcript includes an

⁷ Petitioner has submitted 3 non-consecutive pages of an 83-page transcript from a different but related case. The transcript appears to be the result of one of at least two days of testimony taken in September 2010.

unanswered question as to whether Mr. Smith was ever involved in that decision-making process.

15. Petitioner has offered no affidavit from Mr. Nitschke in support of Petitioner's assertions in this case.

16. The delinquent sales tax payments involve the periods ending November 30, 2006, through the period ending September 30, 2007.

17. The delinquent withholding tax payments involve the periods ending January 1, 2007, through the period ending September 30, 2007.

DECISION

The Petitioner has filed a motion for summary judgment claiming Petitioner "is not the person obligated for these unpaid taxes." (Commission file, Petitioner's letter of May 5, 2011).

In its response brief, the Department requests partial summary judgment that Mr. Smith is personally liable as president and director of Smith Bros. Ford, Inc., for a portion of the period under review. Specifically, the Department seeks a summary judgment ruling that Petitioner is a responsible person as to the sales tax assessment for the monthly assessment periods ending November 30, 2006, through February 28, 2007, and as to the withholding assessment for the semi-monthly tax periods ending January 15, 2007, through February 15, 2007.⁸

⁸ The Commission's conclusions apply to a period beginning January 1, 2006, as well, if that period is in fact at issue here (see earlier footnote #2). As will be seen, this decision holds Mr. Smith responsible up to the time he formally relinquished his position. There has been no question presented for the earlier periods when he was clearly serving as president of SBFI dating back to 1977. (Commission file, Petitioner's letter, February 26, 2011).

APPLICABLE LAW

A motion for summary judgment will be granted if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Wis. Stat. § 802.08(2).

The specific statutes at issue here are:

Section 71.83 Penalties.

(1) CIVIL

* * *

(b) Intent to defeat or evade.

* * *

2. Personal liability. . . Any person required to withhold, account for or pay over any tax imposed by this chapter, . . . who intentionally fails to withhold such tax, or account for or pay over such tax, shall be liable to a penalty equal to the total amount of the tax, plus interest and penalties on that tax, that is not withheld, collected, accounted for or paid over. The personal liability of such person as provided in this subdivision shall survive the dissolution of the corporation or other form of business association. "Person", in this subdivision, includes an officer, employee or other responsible person of a corporation . . . who, as such officer, employee, member or other responsible person, is under a duty to perform the act in respect to which the violation occurs.

Section 77.60 Interest and penalties.

* * *

(9) Any person who is required to collect, account for or pay the amount of tax imposed under this subchapter and who willfully fails to collect, account for or pay to the department shall be personally liable for such amounts, including interest and penalties thereon, if that person's principal is unable to pay such amounts to the department. The personal liability of such person as provided in this subsection shall survive the dissolution of the corporation or other form of business association. . . . "Person", in this subsection, includes officer,

employee or other responsible person of a corporation or other form of business association or a member, employee or other responsible person of a partnership, limited liability company or sole proprietorship who, as such officer, employee or other responsible person, is under a duty to perform the act in respect to which the violation occurs.

ANALYSIS

Petitioner contests all liability for the tax periods addressed in the assessments at issue and moves for a summary judgment ruling that he is not responsible for the taxes assessed. The Department seeks to establish Petitioner's personal liability, requesting partial summary judgment as to the sales tax issue for the monthly assessment periods ending November 30, 2006, through February 28, 2007, and as to the withholding for the semi-monthly tax periods ending January 15, 2007, through February 15, 2007.

1. Burdens and Procedure

As a general rule, assessments made by the Department are presumed to be correct, and the burden is on the Petitioner to prove by clear and satisfactory evidence in what respects the Department erred in its determinations. *Edwin J. Puissant, Jr. v. Wis. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 202-401 (WTAC 1984).

The legal issue in this case is whether Mr. Smith is personally liable for the sales and withholding tax deficiencies of Smith Brothers Ford, Inc., during any portion of the time periods at issue in these assessments. Procedurally, in order to show that an officer or employee is a responsible person, the Respondent (the "Department") has the initial burden of going forward with evidence. The Department must produce clear and satisfactory evidence that the Petitioner had the authority to pay the company's

taxes and the duty to pay them, and there was an intentional breach of that duty. *Itsines v. Dep't of Rev.*, Wis. Tax Rptr. (CCH) ¶401-341 (2010). To prove the element of intent, the Department need only show that the Petitioner made decisions to use corporate funds to pay creditors, with knowledge of taxes being due. *Id*; see also *Ruppel v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶400-313 (WTAC 1997).

Once the Department has produced the required evidence, the burden shifts to the Petitioner who must then overcome the Department's case by clear and satisfactory evidence. *Itsines v. Dep't of Rev.*, Wis. Tax Rptr. (CCH) ¶401-341 (2010).

2. Responsible Person Analysis

Wisconsin, like the federal courts, reads the term "responsible person" broadly. *Strozinsky v. School District of Brown Deer*, 2000 WI 97, ¶59, 237 Wis. 2d 19, 614 N.W.2d 443 (2000).

The president of a corporation necessarily has the authority to direct payment of taxes. *Pharo v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶400-532 (WTAC 2001), citing *Gerth v. Dep't of Revenue*, Wis. Tax Rep. (CCH) ¶203-367 at 15,589 (WTAC 1992). In some instances, even if a person no longer holds the formal title of president, he may still be found liable. See, e.g., *Whitney v. Dep't. of Revenue*, Wis. Tax Rptr. (CCH) ¶400-330 (WTAC 1997) (Former company president found responsible for the tax liability of his ex-wife's company although he had lost the ability to carry out an installment agreement on behalf of the company after his wife fired and divorced him).

The Department has submitted documentation to show that Petitioner was president and sole director during the assessment periods in question until February 9,

2007. As an officer and shareholder, Mr. Smith had the authority to sign checks and did in fact sign income tax returns through the return for 2005 which he signed in August 2006. In addition, the agreement signed in January of 2006 required Petitioner to approve any indebtedness over \$10,000. The company made numerous payments in excess of that amount during the assessment periods in question. The record further shows the Petitioner personally signed checks on behalf of SBFI as late as February 2, 2007; one of those checks, dated January 17, 2007, was payable to the Respondent, the Wisconsin Department of Revenue. The record shows the Petitioner had authority to pay or to direct the payment of taxes, satisfying the first element.

Generally, officers of corporations who have check-signing authority have a duty to pay or to direct the payment of the corporation's taxes. *Itsines v. Dep't of Rev.*, Wis. Tax Rptr. (CCH) ¶401-341 (2010). As the president of the company, Petitioner had a responsibility to know the company's tax status and to see that such taxes were paid. *Id.* There has been no suggestion that he was unaware of the company's tax deficiencies. The evidence clearly sets forth Petitioner's duty to pay the taxes as president and sole director, satisfying the second element.

After establishing authority and duty we turn to the aspect of intentional breach. Consistent with federal officer liability statutes and caselaw, this Commission has held that all that is necessary for intentional breach of duty to be proven is to show that there was a decision to use corporate funds to pay other creditors with knowledge of taxes being due. *Itsines v. Dep't of Rev.*, Wis. Tax Rptr. (CCH) ¶401-341 (2010), citing *Field v. Wis. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶ 401-102 (WTAC 2008).

The Department's affidavit includes checks signed by Petitioner during the assessment periods up to and spanning into February of 2007 directing payment to creditors other than the Department of Revenue. In keeping with the agreement signed in January of 2006 which required Petitioner's approval of any indebtedness over \$10,000, we find Petitioner approved numerous payments in excess of that amount to creditors other than the Department during the assessment periods in question. This use of corporate funds when taxes are owed establishes Petitioner's intentional breach of duty, satisfying the third element.

In our view, the Department has clearly met its initial burden. With these three elements satisfied, the burden shifts to the Petitioner to prove that he is not a "responsible person." In a motion for summary judgment, the Petitioner bears the responsibility to show he is entitled to judgment.

Petitioner's Arguments

Petitioner contends that he is not a responsible person with respect to the assessments at issue ("I am not the person obligated for these unpaid taxes." (Petition for Review, May 5, 2010)). His claims fall into two categories.

a. Not Involved in Management

Petitioner first contends that he was uninvolved in the business during the assessed periods in question. Petitioner's Petition for Redetermination asserts that he "was relieved of all managing authority and responsibility beginning January 1, 2006." The related document is a Stock Subscription and Deferral Agreement signed by Petitioner on January 31, 2006, which designates Mr. Nitschke as general manager and whereby

Petitioner delegates managerial duties to Mr. Nitschke but retains his role as president and majority shareholder. This delegation will be addressed in the following section.

Petitioner's petition claims he was removed from all duties as of November 15, 2005, but he has not presented any evidence which pertains to the 2005 calendar year. The record includes a document on which Petitioner has hand-written "not involved after" next to a referenced date of November 13, 2006; however, that document is an agreement signed by Petitioner on February 7, 2007, as president of SBFI.

Petitioner has submitted an unsworn, unsigned, unauthenticated list of points purportedly from a meeting in December of 2006. That document, author unknown, notes that Petitioner was off the company payroll and insurance with no time frame listed. It also provides that he "stays as dealer of record" with stock ownership in a new business that was being established to succeed SBFI. The "meeting note" does not address Petitioner's title, his ownership of SBFI, his role on board of directors, nor any other aspect of his authority with respect to SBFI finances.

Petitioner claims the resolution electing Mr. Nitschke as president was signed long after the fact and "I do not know why [my attorney] did not have that signed until then because Tom Nitschke portrayed to be president long before that time." (Petitioner's Response, dated May 31, 2011.) However, Petitioner has submitted no evidence to show that Mr. Nitschke acted as or "portrayed" himself to be president at any time prior February 9, 2007, when Petitioner elected Mr. Nitschke president.

Petitioner admits signing a check directed to the Department of Revenue but asserts, again without substantiation, that the particular check at issue was for taxes owed

by a different business. The check in question (attached to Department's Exhibit 29) shows Smith Brothers Ford, Inc., as the account owner.⁹ The Commission further notes that Petitioner signed several subsequent checks on behalf of SBFI, one as late as February 2, 2007.

The Department has submitted evidence of continued check-writing, continued ownership, retention of the title of president, and participation on the Board of Directors. The record does not include evidence that Petitioner sufficiently extricated himself from the company prior to February 9, 2007; thus, we find Petitioner has not met his burden of proof.

For summary judgment purposes, in keeping with the general caselaw outlined above, we find Petitioner was involved in the business sufficient to give rise to responsibility for taxes of the company.

b. Delegation of Responsibility

Petitioner's second contention is an argument that someone else is responsible. In support, Petitioner submitted two pages of a larger transcript in which Thomas Nitschke appeared to testify that he decided himself to discontinue paying taxes on behalf of SBFI. The record also includes a letter signed by the Petitioner indicating that, in late February 2006, Petitioner delegated to Mr. Nitschke banking authority relative to Smith Brothers banking relationship with at least one of the banking institutions used by Smith Brothers, Inc.

⁹ The check in question displays other logos in addition to the full Smith Brothers, Inc., business information where account owner information is traditionally shown on a check. It should also be noted that Smith Brothers, Inc., has several accounts with this particular banking institution titled in the name of Smith Brothers, Inc., d/b/a other businesses.

In keeping with prior decisions of this Commission, neither of these facts establishes that Mr. Nitschke was solely responsible for the taxes in question. Petitioner does not have to be the only person responsible for the taxes in question, or even the most responsible person. More than one person within the corporation can be “responsible.”

The Commission has no obligation to determine whether the person is the *only* responsible person or the *most* responsible person, because the law contemplates the possibility of several responsible persons among the officers and employees of a company when its taxes are not paid.

Whitney v. Dep't. of Revenue, Wis. Tax Rptr. (CCH) ¶400-330 (WTAC 1997).

Petitioner was president and sole director at the time of Mr. Nitschke's decision to stop paying taxes. He was also president and sole director at the time he delegated banking authority. As noted, above, the president of a corporation necessarily has the authority to direct payment of taxes. *Gerth v. Dep't of Revenue*, Wis. Tax Rep. (CCH) ¶203-367 at 15,589 (WTAC 1992). A delegation of authority does not preclude or invalidate Petitioner's own authority or duty. *Balistreri v. Dep't of Revenue*, Wis. Tax Rptr. (CCH) ¶400-330 (WTAC 1997) (Petitioner cannot escape liability because he delegated tax filing and payment responsibilities to others). Regardless of whether someone else (in this case Mr. Nitschke) may have had authority as well, liability may be assessed to the Petitioner as a responsible person.

Thus we find the Petitioner to be a responsible person as president, director, and sole or majority shareholder of Smith Brothers Ford, Inc., until February 9, 2007. We find his alleged delegation of this responsibility ineffective to avoid liability for the taxes at issue.

CONCLUSIONS OF LAW

1. The Department has met its burden by presenting credible evidence to show that Petitioner was president, director, and sole director of SBFI with check-writing authority at least until February 9, 2007, when he elected Mr. Nitschke as president. The Department has shown authority, duty, and an intentional breach of that duty.

2. Petitioner has not produced clear and satisfactory evidence to overcome the presumption that the Department's sales and withholding tax assessments are correct.

3. Petitioner is a "responsible person" with respect to the tax liability of Smith Bros. Ford, Inc., through February 9, 2007. Therefore, Petitioner is liable for the taxes assessed under Wis. Stats. §§ 71.83(1)(b)2 and 77.60(9) relative to the time periods ending prior to February 9, 2007.

4. Questions of fact exist regarding Petitioner's authority after February 9, 2007. The resolution signed by Petitioner on February 9, 2007, specifically dictates that Mr. Nitschke had full authority over check-writing and full authority to determine who else could write checks. However, Petitioner remained a director and shareholder of the corporation after that date. We will defer our discussion regarding the effects of the resolution on Petitioner's responsibility or lack thereof after that date until this issue is explored and briefed.

DECISION AND ORDER

We conclude that Petitioner has failed to show entitlement to judgment. In contrast, the Department has shown that Petitioner was a responsible person until February 9, 2007.

Based on the foregoing, we find the Petitioner liable for sales and withholding taxes as president of Smith Bros. Ford, Inc., for the assessed periods up through and including the period ending January 31, 2007, and for the annual 2006 WT-7 Reconciliation period due on January 31, 2007. Therefore, with respect to that time frame only, we deny Petitioner's motion for summary judgment and we grant the Department summary judgment as to that time frame only.

We find questions of fact as to whether Petitioner was a responsible party after February 9, 2007. Summary Judgment is therefore denied regarding assessed time periods ending after that date.

The Commission will contact the parties within 30 days to discuss further proceedings in these matters.

Dated at Madison, Wisconsin, this 14th day of February, 2012.

WISCONSIN TAX APPEALS COMMISSION

Lorna Hemp Boll, Chair

Roger W. LeGrand, Commissioner

Thomas J. McAdams, Commissioner