



## ***Docket # 239900, 264663***

**STATE OF MICHIGAN  
DEPARTMENT OF CONSUMER & INDUSTRY SERVICES  
MICHIGAN TAX TRIBUNAL**

.Arthur P. Dore,  
Petitioner,

v

Michigan Department of Treasury,  
Respondent.

MTT Docket No. 239900, 264663

Tribunal Judge Presiding  
Kimbal R. Smith III

### OPINION AND JUDGMENT

A hearing was held in the above-captioned case on July 17, 2001, to determine whether Petitioner was properly and lawfully assessed as a corporate officer of Dore Cabinets, Inc.

Type of Tax: Sale, Use, and Withholding

Assessment numbers: G603390, G685054, G685053, G685055, G739598, G739599, G769657, G781152, G820579, G841865, G885667, H257655, H257656, H257657, H257658, H257659, H257660, H608125, H089523 and H322525

[\[1\]](#)

Taxpayer account number: SSI: 376-36-6411

Corporation: Dore Cabinets, Inc.

TIN: 38-3045139

Taxpayer status: Corporate Officer

Taxpayer principal office: 900 Truman Parkway, Bay City, MI 48707

Amount in controversy: [\[2\]](#)

Tax: \$76,269.55

Interest: \$ 8,432.02<sup>[3]</sup>

Penalty: \$36,741.47

Petitioner was represented by David Powers (P39110)

Respondent was represented by Emily J. Sherman (49180)

Assistant Attorney General

## **WITNESSES**

Petitioner: Arthur P. Dore, Julie A. Varshock

### **Testimony of Arthur Dore**

Dore identified his occupation as that of an entrepreneur. He indicated that he had been pursuing this occupation for about 45 years.

Dore indicated that he was a high school graduate with some college extension courses.

After graduating from high school, Dore worked on a farm and Dow Chemical in Midland, Michigan for around two years.

After leaving Dow Chemical, Dore started Dore Wrecking Company around 1960, which was a demolition contractor. Subsequently Dore Wrecking became Dore and Associates Contracting Inc. (hereinafter referred to as Dore and Associates) . Dore and Associates continues in operation to the present and is headquartered in Bay City, Michigan with offices in Tampa, Florida, Chicago, Illinois and Detroit. Dore is the owner of 100% of the stock in Dore and Associates with Dore and Associates holding substantially all of the stock in the various other Dore enterprises.

Dore and Associates operates primarily nationally as a demolition and environmental contractor with some international assignments with between 100 and 500 employees and gross sales of around \$10 million annually.

In addition, Dore testified that he is or has been involved in numerous other business concerns over the years. (Petitioner's Exhibit #12) Among the companies Dore indicated he is involved in are Adore Limited, which is the promotional company that promotes various boxing events and tough man contests; Aerospace America; Beasties; Cruiser's; Dore Development; Old City Hall; Pinconning Cheese; Tri-City Acoustical; Westtown; WLH Saddle and Wolverine. Combining with Dore and Associates and Dore Cabinets, the gross receipts for all of the Dore enterprises total approximately \$19 million in 1992, \$27 million in 1993 and \$15 million in 1994.

Dore testified that as to Adore Limited that Dore and Associates was sole stockholder and that he was the president and that the activities of Adore took about 50% of his time during the period that the subject assessments arose and that Adore had its own bookkeeper, although he did not recall who it was and that Dore did not take care of tax returns or tax payments.

Dore was likewise the president of Aerospace America, with Dore and Associates owning 100% of its stock and Murray Sutherland was running the business, which had its own office staff, and that Dore was not responsible for the paying of taxes and preparation of tax returns for the company. Dore stated he spent very little of his time on this business.

Beasties, Cruiser, Westtown and WHL were bars established as separate corporations each of which Dore and Associates was the 100% stockholder and that Dore was the president of, with each having its own general manager and office staff. Dore stated that the bars had someone who prepared the tax returns and he had little personal involvement in their operation.

In addition to the 50 % of his time that he spent on Adore Limited, Dore stated that almost all the balance of his time was spent running Dore and Associates.

Dore stated that Dore and Associates was a 90 to 95% stockholder in Pinconning Cheese which he acquired in 1993. Pinconning Cheese had its own accounting staff and that Dore had no responsibility for the paying or preparation of tax returns and that he acted as president of Pinconning Cheese.

A summary of Dore's testimony indicated that he was only involved in the day to day management of Dore and Associates Contracting Inc. and Adore Limited. The balance of the Dore controlled corporations, all of which he was president and chief executive of, Dore testified that he had little day to day involvement with and that he did not

consider himself responsible for the preparation and filing of tax returns or to see that necessary tax payments were remitted.

Dore indicated that he would occasionally purchase companies out of bankruptcy. Wolverine was one of these companies, as was Pinconning Cheese. Dore, on direct examination, stated that he would not have purchased these concerns if they had not had existing management in place that could continue to run the concerns.

Dore indicated that he purchased the predecessor of Dore Cabinets (Mayday Cabinets) out of bankruptcy and at the time of purchase the prior management of Don Mayday and Randy Anklan came with the business. If not for Mayday and Anklan, Dore stated he would not have purchased the business.

Dore indicated that aside from Dore and Associates Contracting Inc. that he did not regularly sign tax returns for any of the companies that were shown on Petitioner's Exhibit #12, nor did he regularly sign checks for payment of taxes for any of those companies.

Dore testified that he paid fifty thousand dollars for Mayday Valley Cabinets and that he did not contemplate that neither he nor Dore and Associates were assuming any other liabilities as part of the purchase. Dore acknowledged however that he as listed as President and Treasurer of Dore Cabinets were the corporate documents with filed with the State of Michigan in 1992.

On cross-examination Dore testified that Julie Varshock, Dore and Associates accountant was engaged to prepare the 1993 Michigan Annual Report (Respondent Exhibit #10) which he admitted he executed as president (Transcript p. 84). He further testified that Joseph Goldring is "my director of operations, who is really the guy that would oversee these different little companies probably have directed her" to do the return (Transcript p. 85). Dore further testified that Goldring is employed by Dore and Associates and is "a very versatile guy and its was his job to look out for these other investments." (Transcript p. 86)

Dore, on both direct and cross-examination, testified that none of the documents relevant to this action were signed by him: Respondent's Exhibit 1 being a Sales Tax and Single Business Tax Application for Dore Cabinets, Inc. signed by Arthur P. Dore, President, on April 30, 1992 and stamped received on May 7, 1992 by the Michigan Department of Treasury; Respondent's Exhibit 2, Return for Sales, Use Withholding and Single Business Taxes for Dore Cabinets, Inc. for May 1992 period dated June 10, 1992 signed by Arthur P. Dore, President; Respondent's Exhibit 8, being the

Articles of Incorporation of Dore Cabinets, Inc. dated April 13, 1992 executed by Arthur P. Dore as incorporator; Respondent's Exhibit 9, Certificate of Assumed Name executed by Arthur P. Dore on April 13, 1992; Respondent's Exhibit 10, Michigan Annual Report –Profit Corporations for 1993 executed by Arthur P. Dore as president of Dore Cabinets Inc.; Respondent's Exhibit 16, Power of Attorney signed by Arthur P. Dore on December 22, 1997; Respondent's Exhibit #17, Minutes of First Meet of Board of Directors of Dore Cabinets Inc held on April 21, 1992 and executed under the name of Arthur P. Dore as president and sole director; Respondent's Exhibit 18, Minutes of Annual Meeting of the Board of Directors and Sole Stockholder executed by Arthur P. Dore as president and Jacqueline J. Trumble as secretary on April 6, 1993; Respondent's Exhibit 19, Minutes of Annual Meeting of Board of Directors and Sole Stockholder executed by Arthur P. Dore, Chairman and on behalf of Dore and Associates Contracting Inc., sole stockholder, dated April 5, 1994.

### **Testimony of Julie Varshock**

Julie Varshock testified that she is a Certified Public Accountant (CPA) and has been so since 1989. Ms. Varshock indicated that sometime in November of 1992 she was engaged to do some work for Mayday Valley Cabinets/Dore Cabinets as a result of being contacted by Jackie Trumble whom the witness indicated was the accounting supervisor/manager for Mayday/Dore Cabinets (Transcript pp. 124,125). The work that Ms. Varshock was engaged to do consisted of setting up a cost accounting system for the Mayday computer. The witness indicated at the time of her initial engagement she was unaware that Arthur Dore had any involvement with Mayday. (Transcript p. 126).

Ms. Varshock testified that after completion of the cost accounting system she prepared the 1992 SBT return for Mayday/Dore Cabinets (Respondent's Exhibit #5, Transcript p. 127) at the direction of either Randy Anklan or Jackie Trumbull. She indicated that she had previously done work for various Dore entities and that approximately 10 to 15 % of her time was spent on Dore entity engagements.

At no time during the preparation of the 1992 SBT return did the witness have any conversations with Arthur Dore regarding Mayday/Dore Cabinets finances, preparation of the tax returns or payment of taxes (Transcript pp.127). The witness testified that she believed Randy Anklan and Jackie Trumbull were running "the company." Ms. Varshock testified that Jackie Trumbull was in charge of preparation of the monthly sales returns but did not specifically know who was in charge the preparation of the annual returns (Transcript p. 128). At a point in November or December of 1994, after Dore Cabinets, Inc. went out of business and after assessment notices had been received by Dore Cabinets, she began talking with Arthur Dore regarding the financial situation at Mayday/Dore Cabinets in regard to taxes and

she had been engaged to reconstruct balance sheets, income statements and preparation of a final tax return (Transcript p. 131).

## ISSUES PRESENTED

1. Whether the Michigan Department of Treasury established a prima facie case against Arthur Dore.
2. Whether Arthur Dore was properly assessed as a corporate officer under MCL 205.27a(5) for Sales and Use Tax due and owing by Dore Cabinets, Inc..

The statute that concerns corporate officer liability, MCL 205a(5); MSA 7.657(27a)(5), states, in part:

If a corporation liable for taxes administered under this act fails for any reason to file the required returns or to pay the tax due, any of its officers having control or supervision of, or charged with the responsibility for making the returns or payments, is personally liable for the failure. The signature of any corporate officers on returns or negotiable instruments submitted in payment of taxes is prima facie evidence of their responsibility for making the returns and payments.

## FINDINGS OF FACT

1. Petitioner, Arthur Dore, incorporated or caused to be incorporated Dore Cabinets, Inc. on April 14, 1992 (Respondent's Exhibit #8). The Articles of Incorporation listed the registered office of the corporation at 900 Truman Parkway, Bay City, Michigan 48706.
2. Dore Cabinets, Inc. filed a Certificate of Assumed Name for Dore Cabinets to do business as "Mayday Valley Cabinets" (Respondent's Exhibit #9) on May 18, 1992.
3. The organizational minutes of the Board of Directors of Dore Cabinets, Inc. stated that Petitioner, Arthur Dore, was elected President/Treasurer of the corporation and further stated that the President (Arthur Dore) and the Secretary of the corporation were authorized to sign checks, etc. the corporation (Respondent's Exhibit # 17). The organizational minutes were executed by "Arthur P. Dore, President-Sole Director."
4. On April 30, 1992 a Sales Tax and Single Business Tax Application was executed by Dore Cabinets, Inc. and filed with the Michigan Department of Treasury on May 7, 1992 (Respondent's Exhibit #1) The Application listed Arthur P. Dore and Wendy L. Dore as president and secretary, respectively, and bore the signature of "Arthur P. Dore, President."
5. A monthly return for sales, use, withholding and single business taxes for Dore Cabinets for May 1992 was signed under date of June 20, 1992 (Respondent's Exhibit #2). In the taxpayer signature box on the return appears a signature which is unreadable but with the first letter of the first name appearing to be an "A" and the first letter of the second name appearing to be an "D". The signature is over a box entitled "title" with the word "President" inserted.
6. Petitioner on March 14, 1994 executed a Power of Attorney to Anne K. McLellan to represent Dore Cabinets Inc. in "all matters related in any way to claims made by the Michigan Department of Treasury concerning sales, use and/or withholding taxes" (Respondent's Exhibit #14).
7. Dore & Associates, Inc. was the 100% shareholder of Dore Cabinets, Inc. (Respondent's Exhibits 6 & 7).
8. Arthur Dore owned 100% of the stock in Dore & Associates, Inc. (T.87).

9. Arthur Dore was President, Treasurer and Sole Director of Dore Cabinets, Inc. from the organizational meeting of Dore Cabinets, Inc. held on April 21, 1992 (Respondent's Exhibit #17) until April 5, 1994 when Randy Anklam was named president/treasurer and Ruth Shedlock was named secretary (Respondent's Exhibit #19).
10. Arthur Dore was an authorized signatory from April 21, 1992 until April 5, 1994 an authorized to write checks upon its checking account of Dore Cabinets, Inc. (Respondent's Exhibits #17, #18 and #19).
11. There is no evidence on the record that Arthur Dore ever wrote checks upon the corporation's account.
12. Arthur Dore devoted very little of his time and energy to the running of Dore Cabinets, Inc. in that it involved only a very small piece of what the Tribunal characterizes as "Dore Enterprises."
13. Arthur Dore due to his involvement with many corporations delegated his duties as a corporate officer to others (Transcript p. 109) while retaining ultimate management responsibility as an officer in Dore Cabinets, Inc. in himself. (Transcript pp. 82,88).
14. Arthur Dore was very aware of the duties of the president and treasurer of a corporation and that a president's function was to run the corporation and that the treasurer would be the bookkeeper (Transcript pp. 112-113).
15. The Tribunal rejects Arthur Dore's testimony that he neither signed nor authorized to be signed on his behalf Respondent's Exhibit 1, Respondent's Exhibit 2, Respondent's Exhibit 8, Respondent's Exhibit 9, Respondent's Exhibit 10, Respondent's Exhibit 16, Respondent's Exhibit 17, Respondent's Exhibit 18, Respondent's Exhibit 19 based upon the Tribunal's observation of his demeanor during his testimony and a specific finding of lack of credibility of the witness, taking into consideration Dore's business success and experience.
16. Dore acknowledged that on March 14, 1994, he executed, as president of Dore Cabinets, Inc., a Power of Attorney authorizing Anne K. McLellan to represent Dore Cabinets, Inc., in any and all matters related in any way to claims made by the Michigan Department of Treasury, concerning sales, use and/or withholding taxes. (Respondent's Exhibit #14, Transcript pp. 66 &67)
17. Dore, in his affidavit in support of his Motion for Summary Disposition dated May 9, 1997 in this matter (para. 8); acknowledged that he filed or caused to have filed Respondent's Exhibit #1 with the Michigan Department of Treasury.

#### CONCLUSIONS OF LAW

Michigan Compiled Laws 205.27a(5); MSA 7.657(27a)(50 states in part "[t]he signature of any corporate officers on returns or negotiable instruments submitted in payment of taxes is prima facie evidence of their responsibility for making the returns and payments." Arthur Dore has admitted in his affidavit in support of Motion for Summary Disposition that he signed (or approved the signing of his signature) the Sales, Use and Single Business tax Application for Dore Cabinets, Inc. (Respondent's Exhibit #1) and a Power of Attorney dated March 1994 in which he delegated the authority to discuss taxes with the Michigan Department of Treasury to Ann McLellan (Respondent's Exhibit #14). The Tribunal has determined that, at all times relevant to this matter, Dore was an officer of Dore Cabinets, Inc., to

wit: president/treasurer. The Tribunal has rejected Dore's testimony that he neither executed nor authorized others to affix his signature to relevant tax documents as not being credible. Thus, based on the tax application and power of attorney, together with the Tribunal's rejection of Dore's testimony that he neither executed nor authorized his signature to be placed upon the relevant tax documents, Respondent has established its *prima facie* case against Petitioner.

The Court of Appeals in *Cygan v Department of Treasury*, unpublished opinion per curiam of the Court of Appeals decided March 3, 1998 (Docket No. 192785) states, "[t]he signature mechanism, however is not the only way a finding of derivative officer liability can be supported." In this matter, Arthur Dore's actual or authorized signature appeared in Dore Cabinet, Inc.'s incorporation documents (Respondent's Exhibits #8 &9), the May 1992 monthly return for Sales, Use and Withholding Tax (Respondent's Exhibit 2), the 1993 Michigan Annual Report for Dore Cabinets, Inc. (Respondent's Exhibit #10), the minutes of annual meetings of the corporation, which authorize Arthur Dore to operate the corporation as president and treasurer (Respondent's Exhibits #17 & 18), and Power of Attorney executed by Dore as president of Dore Cabinets, Inc. authorizing a third party to discuss and handle corporate tax matters with the Michigan Department of Treasury (Respondent's Exhibit # 14). This additional relevant evidence further establishes Respondent's *prima facie* case.

Under MCL 205a(5); MSA 7.7.657(27a)(5), a corporate officer who has control or supervision of, or who is charged with the responsibility for, making tax returns or payments is liable for the payment of state taxes.

At all times relevant to the assessments at issue Arthur Dore was a corporate officer of Dore Cabinets, Inc. (President/Treasurer). In his dual roles, was clearly had control of or was charged with the responsibility for making the returns or payments[emphasis added]. The fact that he may have been too busy with business endeavors that he had more money at risk in, was involved in a divorce, or had delegated the actual preparation and filing of the returns to others, does not allow him to escape liability for the payment of the taxes in dispute under MCL 205a(5). Petitioner has failed in meeting his burden of proof to rebut the presumption that he is responsible for making the return or payment of taxes. *Wasserman v Department of Treasury*, 4 MTT 656,661 (1987). Likewise, Petitioner has not met his burden of proof by a preponderance of the evidence that the assessments against him were in error. *Gibb & Sertich v Michigan Department of Treasury*, 7 MTT 843, 846 (1993).

#### JUDGMENT

IT IS ORDERED that Assessment Nos. G603390, G685054, G685053, G685055, G739598, G739599, G769657, G781152, G820579, G841865, G885667, H257655, H257656, H257657, H257658, H257659, H257660, H608125 together with interest and penalties against Petitioner are AFFIRMED.

Entered: Nov. 20, 2001

MICHIGAN TAX TRIBUNAL

By: Kimbal R. Smith III, Tribunal Judge

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[1] Assessment No. H089523 and H322525 were originally part of this action but were canceled by Decision and Order of Determination issued by the Revenue Commissioner on December 16, 1998.

[2] All assessments have been paid in full except H608125 which remains unpaid.

[3] Interest as of February 25, 1995 continuing to accrue at the statutory rate on any unpaid balances.