

Michigan Supreme Court Upholds Retroactive Corporate Officer Tax Relief

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Relief granted to people who were previously subject to personal liability for unpaid tax debts of corporations and other entities should be applied retroactively to existing and future tax assessments, after the Michigan Supreme Court upheld the Court of Appeals decision in *Shotwell v. Department of Treasury*.

The tax relief in question comes from 2014 PA 3, an amendment to Michigan's "responsible officer" liability statute, which states that beginning in 2014 a "responsible person" can only be personally liable for so-called "trust" taxes that were collected from a third party but not remitted to the state.

In *Shotwell*, the Court of Appeals held that several other pro-taxpayer amendments to the law enacted in 2014 PA 3, applied retroactively to all outstanding assessments and tax periods, including provisions:

1. Requiring the Department of Treasury to first assess successor purchasers of a business before pursuing responsible officers,
2. Requiring the department to establish a prima facie case that the individual had actual responsibility for tax filing or payment and "willfully" failed to file or pay to be deemed "responsible," and
3. Limiting the period for which an individual could be held responsible.

The Supreme Court upheld the *Shotwell* decision in an order issued on March 25. The Court of Appeals' *Shotwell* decision is a published decision and therefore binding precedent. Clients facing personal liability for unpaid corporate tax debts can rely upon *Shotwell* and 2014 PA 3 in seeking relief from personal liability for unpaid corporate tax debt.

Gregory Nowak
+1.313.496.7963
nowak@millercanfield.com