

STATE OF NEW YORK
TAX APPEALS TRIBUNAL

In the Matter of the Petition	:	
of	:	
GERALD J. RONCOLATO,	:	DECISION
OFFICER OF ROBLIN INDUSTRIES, INC.	:	DTA No. 806017
	:	
for Revision of a Determination or for Refund of Sales and	:	
Use Taxes under Articles 28 and 29 of the Tax Law for the	:	
Period March 1, 1983 through February 28, 1986.	:	

Petitioner Gerald J. Roncolato, officer of Roblin Industries, Inc., 21 Clark Court, Elma, New York 14059 filed an exception to the determination of the Administrative Law Judge issued on November 15, 1990 with respect to his petition for revision of a determination or for refund of sales and use taxes under Articles 28 and 29 of the Tax Law for the period March 1, 1983 through February 28, 1986. Petitioner appeared by Jaeckle, Fleischmann & Mugel (Paul A. Battaglia, Esq., of counsel). The Division of Taxation appeared by William F. Collins, Esq. (Deborah J. Dwyer, Esq., of counsel).

Petitioner filed a brief on exception. The Division of Taxation filed a letter in lieu of a brief.

After reviewing the entire record in this matter, the Tax Appeals Tribunal renders the following decision.

ISSUE

Whether petitioner was a person required to collect sales and use taxes on behalf of Roblin Industries, Inc. within the meaning of Tax Law §§ 1131(1) and 1133(a) for the period at issue herein

FINDINGS OF FACT

We find the facts as determined by the Administrative Law Judge except for finding of fact "20" which has been modified. We have also made additional findings of fact. The Administrative Law Judge's findings of fact, the modified finding of fact and the additional findings of fact are set forth below.

On March 27, 1987 following an audit, the Division of Taxation issued to petitioner, Gerald J. Roncolato, officer of Roblin Industries, Inc., a Notice of Determination and Demand for Payment of Sales and Use Taxes Due which assessed \$118,535.04 in tax due, plus penalty and interest, for the period March 1, 1983 through February 28, 1986.

Roblin Industries, Inc., a New York corporation ("Roblin Industries" or the "corporation"), is a publicly-held company having approximately 3,750,000 shares of common stock issued and outstanding. The corporation has approximately 4,200 shareholders. Shares of Roblin Industries were traded on the American Stock Exchange and in the over-the-counter market.

Roblin Industries, over the years, engaged in a number of lines of business either directly through unincorporated divisions or indirectly through subsidiary corporations. At one time, the corporation was engaged in the manufacture of steel, the manufacture of shopping carts, the fabrication of steel and aluminum architectural windows, the manufacture of steel fire proof doors, the manufacture of steel ceiling grid systems, and the processing of scrap steel. Operations were located in various parts of the United States and, for a time, in Canada and England.

In 1979, Roblin Industries had sales in excess of \$132,000,000, approximately 1800 employees, assets in excess of \$91,500,000 and a shareholders' equity of approximately \$25,000,000. Business and other conditions required the corporation to scale back its operations, however, so, one by one, lines of business were either sold off or discontinued. Roblin Industries eventually filed a petition for protection under Chapter 11 of the Bankruptcy Code on July 1, 1985. That proceeding was converted to one under Chapter 7 of the Bankruptcy Code on

August 13, 1987 and the corporation is now in the process of liquidation. Even at the time operations completely ceased in 1986, Roblin Industries was a substantial company, having in its last full year of operations sales of approximately \$35,000,000 and approximately 350 employees.

During the period covered by the audit, the corporation was directly engaged in two principal lines of business: a scrap metal business conducted under the name "Roblin Scrap Products Company", which business was discontinued in February 1986; and the manufacture of steel under the name "Roblin Steel Company" ("Roblin Steel"), which business continued until the manufacturing plant closed in November 1986 and the corporation completely ceased operations in December 1986. Both businesses were conducted as unincorporated divisions of Roblin Industries.

Petitioner joined Roblin Industries in 1974 as vice president, finance and administration, and treasurer. Daniel A. Roblin, Jr., the corporation's founder and long-time president resigned as president of Roblin Industries effective October 31, 1985. Petitioner became president of Roblin Industries on November 1, 1985. When petitioner became president, he also became a member of the board of directors. Petitioner held those positions and the office of treasurer until his resignation on December 31, 1986. Mr. Roblin remained chairman of the board of the corporation throughout that time.

Petitioner was a full-time, salaried employee of Roblin Industries. Petitioner's salary was set by Mr. Roblin. During the years in question his salary was as follows: 1983 - \$57,500.00; 1984 - \$118,446.00; 1985 - \$115,378.00; and 1986 - \$95,500.00. Petitioner's salary was dependent to a significant degree upon the earnings of the corporation. His salary was reduced in 1985 and 1986 because of the corporation's deteriorating earnings. In 1984, \$50,000.00 of petitioner's salary was a bonus paid to him as a participant in the corporation's bonus program. The other corporate officers also participated in this bonus program. In 1984, the secretary of the corporation was paid a bonus of \$17,500.00.

With respect to the years in question, except for 1984 when Mr. Roblin was the highest compensated officer, petitioner was the highest compensated employee or officer of the corporation.

Mr. Roblin's compensation during the years at issue was as follows: 1983 - \$42,001.00; 1984 - \$218,868.00; and 1985 - \$91,808.00. There is no evidence in the record that Mr. Roblin received a salary in 1986.

Petitioner owned a small amount of the common stock of the corporation. Petitioner's stock holdings amounted to less than one percent of the total number of shares issued and outstanding. Mr. Roblin was the largest single shareholder of the corporation during the audit period. His holdings amounted to about one percent of the total number of shares issued and outstanding.

During the period in question, Roblin Industries operated three cost centers, Corporate Headquarters, Roblin Steel and Roblin Scrap. Roblin Scrap maintained its operations in Lackawanna, New York. Roblin Steel maintained its offices at 101 East Avenue, North Tonawanda, New York. Corporate Headquarters maintained offices at 241 Main Street, Buffalo, New York, until August 1985, when Corporate Headquarters moved to the North Tonawanda site. While Corporate Headquarters was a cost center, it was not an operating unit.

The entire assessment herein results from a Division determination, following an audit, that Roblin Industries improperly failed to pay sales and use taxes upon certain of its purchases. The vast majority of the purchases in question were made by Roblin Industries' steel manufacturing business, Roblin Steel.

In addition to the facts found by the Administrative Law Judge, we find the following:

Sales and use tax on purchases made by Roblin Steel were paid either to the vendor or directly to the State. If the vendor billed the tax, then it was paid to the vendor. Otherwise, the purchase was to be included in the sales and use tax return to determine the tax paid directly to the State (Tr., p. 50).

Throughout the audit period, Roblin Industries had a decentralized corporate structure. Under that structure, Roblin Steel operated as an autonomous unit. It had its own offices; its own Division president through October 1985; its own vice-president and controller; its own administrative and accounting personnel; its own payroll; it maintained its own books and records; it prepared and filed its own sales tax returns. Roblin Steel was responsible for paying its own bills. In addition, Roblin Steel was responsible for purchasing its own materials, and manufacturing and marketing its product.

Petitioner was employed at Corporate Headquarters throughout the period at issue. As vice-president, finance and administration, and treasurer of Roblin Industries, Inc., petitioner was responsible to and reported directly to Mr. Roblin, the corporation's president. Petitioner's day-to-day responsibilities involved the overall administration of the corporation. He reviewed monthly operations reports supplied to him by the divisions. These reports included profit-and-loss statements, balance sheets and cash flow reports. The reports from the divisions were not intended to advise petitioner of whether the divisions were meeting their sales tax obligations. Indeed, the reports contained insufficient information from which petitioner could make such a determination. Petitioner analyzed the division reports in one consolidated report and presented his consolidated report to the corporation's management committee and its board of directors. (The management committee set corporate policy. Petitioner, along with the other corporate officers, was a member of this committee.) Petitioner's consolidated reports were intended to provide a picture of the corporation's overall financial position and to point out potential problems or areas of concern. Division heads also reported on operations directly to the board and management committee.

Petitioner's responsibilities also included negotiating loans and rescheduling or restructuring loan repayments with various banks on behalf of the corporation. Petitioner did not have authority to bind the corporation in such matters, but would present whatever arrangement had been negotiated to the board for its approval.

In addition to the facts found by the Administrative Law Judge, we find the following:

After a loan was secured, petitioner would, in his discretion, receive the loan proceeds from the banks as they were needed (Tr., p. 91). Further, petitioner determined the timing and amount of these proceeds would be distributed to the divisions to meet operating expenses (Tr., p. 91). Before these funds were disbursed at the divisional level, the divisions were required to document their needs by submitting to petitioner a cash requirements projection, supported by underlying documentation (Tr., pp. 92-93).

Petitioner was also involved in the corporation's sale of various lines of businesses. He consulted with the corporation's outside attorneys and its in-house counsel when necessary and he consulted with the corporation's outside accountants when necessary. The accountants kept petitioner advised of investment tax credits available to the corporation. Petitioner, in turn, advised the president and the board. He signed the corporation's Federal income tax returns and its New York franchise tax reports, both of which were prepared by the corporation's outside accountants.

Petitioner's reports to the corporation's board of directors during the audit period, in addition to reports on general business conditions and banking matters, included reports on investment tax credits, a Canadian tax matter, the status of the corporation's payments of salaries, withholding taxes, utilities and an IRS settlement. Petitioner also reported on the corporation's cash flow problems, and sales of its business lines.

In July 1983 petitioner, on behalf of the corporation, reported to the Division of Taxation changes in the corporation's taxable income following an audit by the Internal Revenue Service with respect to the years 1976 through 1980. Petitioner signed reports in respect of such changes which were required to be filed with the Division under Article 9-A.

Petitioner did not have responsibility for division operations. The heads of those divisions reported to the executive vice president of operations who, in turn, reported to the president. Petitioner, as vice-president, finance and administration, was responsible for advising the unit managers, and had access to division personnel and records to carry out that function. Petitioner

had no authority to give direction to division management, but was responsible to meet the divisions' cash requirements, which were based upon the division heads' projections.

In addition to the facts found by the Administrative Law Judge, we find the following:

Petitioner submitted into the record a memorandum from the corporation's President, William Roblin, which was issued to the officers and divisional heads in 1982 (Tr., pp. 64, 74). This memorandum illustrates petitioner's role within the corporate structure:

"The Vice President-Finance, Legal and Personnel operate staff functions. They are responsible for advising line management from the top down within their specialized fields. They do not have the authority to give direction to anyone in the units.

"However, in order to properly carry out their duties of advising the Unit Executives, Executive Vice President-Operations and President, they must have access to the units for consultation and information. We are an open organization. There is no reason for the units to withhold any information from the corporate staff at any time.

"We are an informal organization. It is not necessary to follow the line of command for information. Any officer has access to any unit operating personnel to gather information necessary for the officer to carry out his function.

"The staff officers can and should suggest, recommend and advise. If their advice isn't taken and they consider it in the Company's best interest, they are obligated to advise the Executive Vice President-Operations and then the President. The action is then up to the Executive Vice President-Operations or the President.

"The staff is responsible for making their recommendations strongly and repeatedly when they feel it is important. However, after the Executive Vice President-Operations or the President consider the advice and make a decision, the decision should be wholeheartedly supported by the staff . . ." (Exhibit 2).

Petitioner attempted, prior to the period at issue, to implement an internal audit program to more effectively carry out his responsibility of overseeing unit operations and reporting his results to the President, but was prohibited from doing so (Tr., pp. 64, 75).

We modify finding of fact "20" of the Administrative Law Judge to read as follows:

At hearing, testimony was heard from Frank Simpson, Vice President and Controller of Roblin Steel, who was responsible for all accounting and financial matters for this division, including the preparation of tax returns (Tr., pp. 30, 46). As noted previously, throughout the audit period Roblin Steel prepared and filed its own sales tax returns (Tr., p. 47). These returns were prepared under the corporate name, Roblin Industries, and were signed by the Manager of General Accounting of Roblin Steel, Mark Voelker (Exhibit 2). If this manager required advice with respect to the preparation of these returns, he consulted directly with the corporation's outside accountants. The review of these returns was performed strictly at the division level, and was only performed sporadically due to the confidence that Simpson possessed in Voelker (Tr., p. 47).¹

Petitioner was not involved in the preparation of Roblin Steel sales tax returns; nor did petitioner sign any such returns.

Throughout the audit period, Roblin Steel maintained its own checking accounts. Those accounts were maintained at the Marine Midland Bank. At all times relevant hereto the accounts required two signatures to withdraw funds. There were five authorized signatories on the Roblin Steel account. Petitioner was one of those authorized signatories.

Checks relating to the operations of Roblin Steel, including checks in payment of sales taxes, were drawn upon the accounts of Roblin Steel and were prepared and issued by, and at the

¹Finding of fact "20" of the Administrative Law Judge read as follows:

"As noted previously, throughout the audit period Roblin Steel prepared and filed its own sales tax returns. These returns were prepared under the corporate name, Roblin Industries, and were signed by the manager of general accounting of Roblin Steel. If this manager required advice with respect to the preparation of these returns, he consulted directly with the corporation's outside accountants. To the extent that such returns were reviewed, they were reviewed by Roblin Steel personnel only. An employee of Roblin Steel was responsible for the payment of sales and use taxes resulting from its purchases."

We modified this finding of fact to reflect further details of the record.

direction of, personnel of Roblin Steel and not petitioner. Generally those checks bore facsimile plate signatures and were not manually signed. The facsimile plate was not in the control of petitioner; rather, it was in the control of Roblin Steel personnel.

Petitioner's signature was among those reproduced on the facsimile plate and occasionally appeared on Roblin Steel checks, including those for payment of sales taxes.

Petitioner would manually sign checks of Roblin Steel only in those limited instances where a manual signature was required, e.g., in cases of checks which were to be certified, and where other authorized signatories were not available. When petitioner did manually sign checks of Roblin Steel, he did so at the request of Roblin Steel personnel.

On March 14, 1986, petitioner signed a Consent Extending Period of Limitation for Assessment of Sales and Use Taxes under Articles 28 and 29 of the Tax Law (Form AU-2.10) extending the period for assessment against Roblin Industries for the period at issue in the instant proceeding until December 20, 1986. Petitioner executed this consent at the request of the personnel of Roblin Steel involved in the sales tax audit because the consent required the signature of a corporate officer. At that time the corporation had only two officers. The other officer, Ruby E. Tresch, also signed a Consent Extending Period of Limitation for Assessment of Sales and Use Taxes at the request of Roblin Steel personnel.

Petitioner did not deal with the sales tax auditors who conducted the audit in question. A. Robert Wolf, a former employee of Roblin Steel, represented Roblin Steel in the audit, having been retained for that purpose as an independent consultant. Mr. Wolf was retained on behalf of Roblin Steel by Frank C. Simpson, who was then the controller of Roblin Steel. The Audit Method Election for the audit in question was signed by Mr. Simpson.

Petitioner's day-to-day responsibilities did not change when he became president of Roblin Industries on November 1, 1985. At that point he was heavily involved with working with banks in order to have enough cash available to keep the divisions operational. This responsibility consumed most of petitioner's time during his tenure as president.

OPINION

The Administrative Law Judge determined below that petitioner was a responsible officer of Roblin Industries and, thus, was "a person required to collect tax" within the meaning of Tax Law § 1133(a). Accordingly, petitioner was held to be personally liable for the unpaid tax. The Administrative Law Judge also determined that the personal liability of petitioner as a responsible officer extends to the failure to pay sales tax when the corporation is the purchaser.

On exception, petitioner contends that because his corporate duties did not extend to ensuring compliance with the sales tax law by Roblin Steel, he was not a responsible officer. Accordingly, he asserts that he should not be held personally liable for the unpaid sales tax.

In response, the Division of Taxation (hereinafter the "Division") relies on the determination of the Administrative Law Judge.

We reverse the determination of the Administrative Law Judge in part and affirm in part.

Tax Law § 1133(a) imposes personal liability for taxes imposed, collected or required to be collected under Article 28 upon a "person required to collect such tax." This term is defined as:

"any officer, director, or employee of a corporation . . . who as such officer . . . is under a duty to act for such corporation . . . in complying with any requirement of [Article 28]" (Tax Law § 1131[1]).

It is well-settled that the holding of corporate office does not, per se, impose tax liability upon an officeholder (Matter of Chevlowe v. Koerner, 95 Misc 2d 388, 407 NYS2d 427). Rather, whether a person has a duty to collect sales tax must be determined based on an examination of the particular facts of each case (Matter of Cohen v. State Tax Commn., 128 AD2d 1022, 513 NYS2d 564). Through the case law, several indicia have been established which are used to determine officer liability:

"The question to be resolved in any particular case is whether the individual had or could have had sufficient authority and control over the affairs of the corporation to be considered a responsible officer or employee. The case law and the decisions of this Tribunal have identified a variety of factors as indicia of responsibility: the individual's status as an officer, director, or

shareholder; authorization to write checks on behalf of the corporation; the individual's knowledge of and control over the financial affairs of the corporation; authorization to hire and fire employees; whether the individual signed tax returns for the corporation; the individual's economic interests in the corporation" [citations omitted] (Matter of Constantino, Tax Appeals Tribunal, September 27, 1990).

Before embarking on a factual determination of this issue, it is helpful to understand the theory behind the use of these indicia. In noting the existence of these factors, it is generally recognized that with some combination of these collective powers, a concomitant duty to ensure payment of sales taxes will arise. Thus, we focus on these powers as a barometer to aid in determining the narrow issue at hand, which is whether petitioner had a "duty to act" for such corporation in complying with any requirement of [Article 28]" (Tax Law § 1131[1], [emphasis added]; see, Godfrey v. United States, 748 F2d 1568, 84-2 USTC ¶ 9974).

It is well established that where statutory language is clear and unambiguous, it should be construed so as to give effect to the plain meaning of the words used (Marcus Assocs. v. Town of Huntington, 45 NY2d 501, 410 NYS2d 546; Statutes §§ 76, 94). Duty is defined as "obligatory tasks, conduct, service, or functions that arise from one's position" (Webster's Third New International Dictionary [1986]). Obligatory, or "obligation" is defined as "something that one is bound to do or forbear" (Webster's, *supra*). It follows that in order to impute upon an officer a "duty to act," and, thus, classify him as a "person required to collect tax," it is essential that such person has the authority to act in this specific regard.² Thus, the significance of these indicators of general authority must be applied with due consideration for other factors which define an individual's authority to ensure that sales taxes are paid. This analysis recognizes "[t]he normal

²This interpretation is consistent with the approach taken by the Federal courts under the analogous inquiry of whether a person is a responsible officer for purposes of collecting Federal withholding tax. In determining whether there is a "duty to perform the act in respect to which the violation occurs," a requirement for imposing liability is that the person possesses the authority to see that the taxes withheld from the various sources are remitted to the Government (Internal Revenue Code §§ 6671, 6672 [emphasis added]; Monday v. United States, 421 F2d 1210, 70-1 USTC ¶ 9205 [7th Cir]; cert denied 400 US 821, 27 L Ed 2d 48; Harrington v. United States, 504 F2d 1306, ¶ 9772 [1st Cir]).

division of and limitations on authority exercised by various representatives of a particular business" (Godfrey v. United States, *supra*, 84-2 USTC ¶ 9974, 85,984, quoting Bauer v. United States, 543 F2d 142, 76-2 USTC ¶ 9720, 85,312). It is particularly important to recognize such divisions and limitations, where, as here, the corporation had a large number of employees and the stock was publicly traded.

Petitioner entered into the record a policy memorandum from the corporation's President, Daniel A. Roblin, Jr., distributed to the management committee prior to the audit period which defined petitioner's role in the corporation. This memorandum described the functions of the corporation's management team stating, in part:

"The Vice President-Finance, Legal and Personnel operate staff functions. They are responsible for advising line management from the top down within their specialized fields. They do not have the authority to give direction to anyone in the units."

* * *

"The staff officers can and should suggest, recommend, and advise. If their advice isn't taken and they consider it in the Company's best interest, they are obligated to advise the Executive Vice President-Operations and then the President. The action is then up to the Executive Vice President-Operations or the President.

"The staff is responsible for making their recommendations strongly and repeatedly when they feel it is important. However, after the Executive Vice President-Operations or the President consider the advice and make a decision, the decision should be wholeheartedly supported by the staff . . ." (Exhibit 2, emphasis added).

Throughout the audit period, Roblin Industries had a decentralized corporate structure. Under that structure, Roblin Steel operated as an autonomous unit. This autonomy is exemplified by the fact that Roblin Steel prepared and filed its own sales tax returns and, to the extent that such returns were reviewed, they were reviewed by Roblin Steel personnel only. Checks relating to the operations of Roblin Steel, including checks in payment of sales taxes, were drawn upon the accounts of Roblin Steel and were prepared and issued at the direction of

personnel of Roblin Steel and not petitioner. These facts are consistent with petitioner's contention that he served merely as an advisor, with no authority to ensure that Roblin Steel complied with its sales tax obligations.

Based on the Roblin memorandum and petitioner's uncontroverted testimony, it is clear that petitioner's central function in the corporation was to stay abreast of the financial activities of each unit. This knowledge was necessary to fulfill his duty to advise and inform the President. In addition, petitioner played an important role in negotiating loans for the corporation and in selling off the corporation's various lines of business. These roles were significant, as reflected by his salary, which was at least the second highest in the corporation throughout this period. However, an influential role in the financial affairs of a large corporation does not in itself render the individual liable for the sales tax (see, Godfrey v. United States, supra). Instead, the inquiry is whether petitioner had sufficient authority to ensure that the sales taxes of Roblin Steel were paid. We conclude that due to the autonomy of Roblin Steel and petitioner's position outside of the direct line of control over Roblin (prior to November 1, 1985), petitioner did not have sufficient authority over Roblin Steel to render him liable for the sales tax due prior to November 1, 1985.

Further evidence of petitioner's general lack of authority in the corporation was his role in securing additional financing for the corporation. Although he served as the primary negotiator with the banks, a task which took up a large amount of his time, he did not have the authority to bind the corporation in these agreements. Rather, he reported the negotiated terms to the President and Board of Directors, who then made the decision whether to enter the agreement. Although not dispositive that petitioner lacked authority to comply with Tax Law § 1133(a), this

arrangement is consistent with facts illustrating the balance of power within the corporation, under which petitioner was accorded a mere advisory role.³

Petitioner testified at hearing that upon receiving loan proceeds from the banks, he distributed these proceeds to the units at his discretion. Although significant in assessing petitioner's influence in the corporation generally, this fact must be viewed in terms of its impact on petitioner's authority to ensure the payment of sales tax. Before receiving funds from petitioner, the units were required to document their needs by submitting a cash requirements projection supported by underlying documentation. Aside from this lump sum distribution, petitioner had no means to ensure that the units would actually allocate these funds to their documented needs. Therefore, this limited control over the disbursement of corporate funds did not give petitioner the "final word as to what bills or creditors should or should not be paid and when" (see, White v. United States, 372 F2d 513, 67-1 USTC ¶ 9250).

We find the Division's reliance on Matter of Barton (Tax Appeals Tribunal, December 28, 1989) misplaced. Barton stands for the proposition that an officer who has the authority to ensure payment of sales tax cannot absolve himself from personal liability under section 1133(a) by merely delegating this "duty to act" for the corporation to a subordinate.⁴ However, in order for petitioner to delegate a duty, he must first have a duty himself. Because he had no authority to ensure that Roblin Steel met its sales tax obligations and, thus, no duty to act for the

³The Administrative Law Judge notes that petitioner sat on the management committee, reviewed operations reports from the units, and reported on the corporation's overall financial position. He negotiated with the banks, was involved in the sale of the corporation's various lines of businesses, and reported to the Board of Directors on a variety of financial and tax matters. He signed the corporation's franchise tax reports and was an authorized signatory on bank accounts. Based on these facts, the Administrative Law judge determined that these facts support a conclusion that petitioner had sufficient authority and control over the corporation to find that he was under a duty to ensure compliance with its sales tax obligations. We disagree. Each of these facts, aside from the latter two, fail to reflect any authority held by petitioner and are wholly consistent with the Roblin memorandum stating that the Vice President-Finance operates a "staff function," whose role was merely to "suggest, recommend, and advise" (Exhibit 2).

⁴Although in Barton there was no explicit statement that authority is required for a duty to exist, this was implicit in our analysis, in which we emphasized that the taxpayer was the president and director during the period in question, owned 40 percent of the corporation's stock, had sole check-writing responsibilities, hired and fired personnel at all levels, and signed the corporation's tax returns.

corporation to achieve this end, the mere fact that Roblin Steel's sales taxes were prepared by those located in a position seemingly lower in the corporate hierarchy is of no consequence.

At the time petitioner became president of Roblin Industries, petitioner not only continued his duties as Vice President, Finance and Administration, but he also assumed the top of the corporation's chain of command. The division heads reported to him through the Executive Vice President. Thus, petitioner's argument that he continued to act merely as an advisor during the period he was president of the corporation is without merit. We conclude that petitioner has not established that he was not a "person required to collect such tax" under section 1133(a) during the period after he became president of the corporation (Matter of Barton, supra).

Accordingly, it is ORDERED, ADJUDGED, and DECREED that:

1. The exception of petitioner Gerald A. Roncolato, officer of Roblin Industries, Inc. is granted for the period from March 1, 1983 through October 31, 1985, in which period he is found not to be a "person required to collect tax" under Tax Law § 1133(a), and in all other respects is denied;
2. The determination of the Administrative Law Judge is reversed to the extent indicated in paragraph "1" above, and in all other respects is affirmed;
3. The petition of Gerald A. Roncolato, officer of Roblin Industries, Inc. is granted to the extent indicated in paragraph "1" above, and in all other respects denied; and

4. The Division of Taxation is directed to modify the Notice of Determination dated March 27, 1987 in accordance with paragraph "1" above but such notice is otherwise sustained.

DATED: Troy, New York
August 15, 1991

/s/John P. Dugan
John P. Dugan
President

/s/Francis R. Koenig
Francis R. Koenig
Commissioner

/s/Maria T. Jones
Maria T. Jones
Commissioner