

DANNY PARRIS
73 Fox Street
Newton, AL 36352,

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

§

Taxpayer,

§

DOCKET NO. P. 97-255

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER

The Revenue Department assessed a 100% penalty against Danny Parris ("Taxpayer"), as a person responsible for paying the delinquent withholding tax liability of HPH Steel Erectors, Inc., for the last quarter of 1995 and the first quarter of 1996. The Taxpayer appealed to the Administrative Law Division pursuant to Code of Ala. 1975, §40-2A-7(b)(5)a. A hearing was conducted on August 19, 1997. The Taxpayer was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Jeff Patterson represented the Department.

The issue in this case is whether the Taxpayer is personally liable for the unpaid withholding taxes of HPH Steel Erectors, Inc. for the quarters in question pursuant to Alabama's 100% penalty statutes, Code of Ala. 1975, §§40-29-72 and 40-29-73. That issue turns on whether the Taxpayer was responsible for paying the withholding taxes for the corporation, and in that capacity willfully failed to do so.

The corporation filed withholding tax returns for the quarters in issue, but failed

to pay the tax due as reported. The Department subsequently assessed the tax against the Taxpayer, individually, as a person responsible for paying the corporation's trust fund taxes.

The facts relied on by the Department are:

(1) The taxpayer was an initial incorporator and was on the Board of Directors of the corporation;

(2) The Taxpayer had check signing authority and wrote checks for the corporation during the subject period. The corporation also had sufficient money in its checking account to pay the taxes in issue;

(3) The Taxpayer signed the corporation's withholding tax returns for the quarters in issue;

(4) The Taxpayer was listed as the "tax matters person" on the corporation's 1995 federal income tax return, and;

(5) The corporation's Board of Directors appointed the Taxpayer as president and chairman of the corporation for one year on August 1, 1995, which encompassed the two quarters in issue.

Sections 40-29-72 and 40-29-73 together impose a liability on any person "responsible" for paying a corporation's trust fund taxes who "willfully" fails to pay those taxes.

A responsible person is someone with the duty, status, and authority to pay the

taxes in question. Gustin v. U.S., 875 F.2d 485 (9th Cir. 1989). A responsible person willfully fails to pay a corporation's taxes if he knows or should know that tax is owed, has the ability to pay, but fails to do so. Roth v. U.S., 779 F.2d 1567 (11th Cir. 1986); Stallard v. U.S., 12 F.3d 489 (5th Cir. 1994).

In this case, the Taxpayer, as president of the corporation, clearly was responsible for paying the corporation's trust fund taxes. The Taxpayer also had the authority and ability to pay those taxes, but failed to do so. The Taxpayer is thus individually liable for the corporation's unpaid withholding taxes.

The Taxpayer concedes that he is liable for the first quarter 1996 taxes, but argues that another individual, T.C. Holland, was president of the corporation and should be required to pay for the last quarter of 1995. T.C. Holland may also be a responsible person under the 100% penalty statutes, but that would not relieve the Taxpayer of liability. More than one person can be responsible for a corporation's unpaid taxes. U.S. v. Rem, 38 F.3d 634, 642 (2nd Cir. 1994).

The final assessment is affirmed. Judgment is entered against Danny Parris for \$7,422.33, plus applicable interest.

As indicated above, more than one person may be responsible for the tax in issue. The Department thus may assess and collect all or a part of the tax against any other individual that was also responsible for paying the corporation's taxes. The Taxpayer should contact Martha Pegues in the Department's Collection Services Division concerning

payment of the amount due.

This Final Order may be appealed to circuit court within 30 days pursuant to Code of Ala. 1975, §40-2A-9(g).

Entered August 17, 1997.

BILL THOMPSON
Chief Administrative Law Judge

BT:sl

cc: Jeff Patterson, Esq.
Danny Parris
Martha Pegues