

JAMES S. RAHAIM
200 Cox Avenue
Hattiesburg, MS 39402,
DIVISION

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW

§

Taxpayer,

§

DOCKET NO. P. 00-668

v.

§

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

§

FINAL ORDER

The Revenue Department assessed a 100 percent penalty against James S. Rahaim (“Taxpayer”), as a person responsible for paying the State sales tax liability of Ropers of Huntsville, Inc., for July and August 1995. 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 February 2, 2001 in Mobile, Alabama. The Taxpayer was notified of the hearing by certified mail, but failed to appear. Assistant Counsel Duncan Crow represented the Department.

ISSUE

The issue in this case is whether the Taxpayer is personally liable for the unpaid sales taxes of Ropers of Huntsville, Inc. (“corporation”) for July and August 1995 pursuant to Code of Ala. 1975, §§40-29-72 and 40-29-73.

FACTS

The Taxpayer was the secretary of the corporation. He opened the corporation’s checking account with AmSouth Bank, and had check signing authority on the account. He also applied for the corporation’s withholding and sales tax accounts with the Revenue Department.

The Taxpayer wrote numerous checks on the corporation's account from June through September 1995. He also signed the corporation's sales tax returns, including the September 1995 return.

The corporation failed to pay its Alabama sales tax liabilities for July and August 1995. The Department assessed the Taxpayer personally for those taxes. The Taxpayer appealed.

ANALYSIS

Sections 40-29-72 and 40-29-73 are modeled after the federal 100 percent penalty statute, 26 U.S.C. §6672. The above statutes levy a 100 percent penalty against any person responsible for paying a corporation's trust fund taxes that willfully fails to do so. A person is a "responsible person" pursuant to the above statutes if he has the duty, status, and authority to pay the taxes in question. *Gustin v. U.S.*, 876 F.2d 485, 491 (5th Cir. 1989). A responsible person "willfully" fails to pay the trust fund taxes of a corporation if the person knew that taxes were owed, but paid or acquiesced in the payment of other creditors in lieu of the government. *Roth v. U.S.*, 567 F.Supp. 496 (1983).

In this case, the Taxpayer was secretary of the corporation, signed the corporation's sales tax returns, signed checks on the corporation's checking account, and wrote numerous checks to other creditors during the months in question. Those facts indicate that the Taxpayer was a person responsible for paying the corporation's sales taxes, and in that capacity willfully failed to do so.

The final assessment in issue is *prima facie* correct. Code of Ala. 1975, §40-2A-7(b)(5)c. On appeal, the burden was on the Taxpayer to prove that the assessment was incorrect, i.e. either by showing that he was not a person responsible for paying the corporation's sales taxes, or that he did not willfully fail to do so. As indicated, the Taxpayer failed to appear at the February 2

hearing, and has otherwise failed to present evidence indicating that the final assessment is incorrect.

The final assessment is affirmed. Judgment is entered against the Taxpayer for \$6,147.53. Additional interest is also due from the date of entry of the final assessment, September 27, 2000.

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

Entered February 6, 2001.