

RICHARD D. CRUMPTON	§	STATE OF ALABAMA
1421 8th Place		DEPARTMENT OF REVENUE
Pleasant Grove, AL 35127,	§	ADMINISTRATIVE LAW
DIVISION		
Taxpayer,	§	DOCKET NO. P. 00-707
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE.		

FINAL ORDER

The Revenue Department assessed a 100 percent penalty against Richard D. Crumpton (“Taxpayer”), as a person responsible for paying the withholding tax liability of Crumpton Sprinkler Company, Inc, for 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 January 22, 2001. The Taxpayer was notified of the hearing by certified mail, but failed to appear. Assistant Counsel David Avery represented the Department.

ISSUE

The issue in this case is whether the Taxpayer is personally liable for the unpaid trust fund taxes of Crumpton Sprinkler Company, Inc. pursuant to Code of Ala. 1975, §§40-29-72 and 40-29-73.

FACTS

The Taxpayer was president of Crumpton Sprinkler Company, Inc. (“corporation”) during 1996. He also had check signing authority for the corporation, and wrote numerous checks to various creditors during the subject year.

The corporation filed a third quarter 1996 withholding tax return with the Department. The corporation also remitted a check with the return for the tax

due. The check was signed by the Taxpayer. The corporation's bank returned the check for insufficient funds. The corporation subsequently filed an annual A-3 annual withholding return, which showed additional tax due.

The Department assessed the corporation for the unpaid 1996 withholding tax. The corporation failed to pay. The Department consequently assessed the Taxpayer for the unpaid tax. 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 Department deemed the Taxpayer to be a responsible person because he was president of the corporation during the subject year. The Department also asserts that the Taxpayer willfully failed to pay the taxes in question because he had check signing authority and paid other creditors in lieu of the Department.

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 withholding taxes, or that he did not willfully fail to do so. As indicated, the Taxpayer failed to appear at the January

22 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 \$9,056.39. Additional interest is also due from the date of entry of the final assessment, October 18, 2000.

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

Entered January 23, 2001.