

ALABAMA TAX TRIBUNAL

VONCILLE POMPEY, §
Taxpayer, §
v. § DOCKET NO. P. 23-1048-JP
STATE OF ALABAMA §
DEPARTMENT OF REVENUE.

OPINION AND FINAL ORDER

In 2006, the Alabama legislature passed Act 589 “to establish civil penalties for, and provide injunctive relief against, tax return preparers who engage in unethical tax preparation conduct.” The Act became effectively immediately upon Governor Bob Riley’s approval by signature on April 26, 2006. Pursuant to the Act, the Alabama Department of Revenue is authorized to impose penalties on a paid tax return preparer who willfully attempts to understate a tax liability on a return or a refund claim, or who recklessly or intentionally disregards tax regulations. Other penalties may be imposed, also.

The Revenue Department took such action against Ms. Voncille Pompey, assessing “paid tax return preparer” penalties against her for years 2019, 2020, and 2021. Ms. Pompey appealed the assessments to the Alabama Tax Tribunal, and a trial was held on August 15, 2024. Ms. Pompey appeared on her own behalf and testified. David Avery represented the Revenue Department, and Jan Bevan, a manager in the Department’s compliance unit, appeared and testified.

Questions Presented

- (1) Whether Ms. Pompey prepared tax returns or refund claims for compensation.

- (2) If so, whether Ms. Pompey willfully attempted to understate a tax liability on returns she prepared or recklessly or intentionally disregarded tax regulations in the preparation of those returns.
- (3) If the answer to Question 1 is yes, the third question is whether Ms. Pompey failed to furnish completed copies of tax returns to those for whom she prepared returns or failed to retain copies of such returns.

Facts

At trial, Ms. Bevan testified that the Revenue Department's investigation of a potential tax preparer penalty situation began when the Department received a return featuring a suspiciously large loss reported on Schedule C. The Department attempted to contact the taxpayer that filed the return but received no response. The Department then investigated the internet protocol ("IP") address associated with the filing of the return and found approximately 100 returns filed from the same address. Ms. Bevan conceded during the trial that she did not know to whom or to what the IP address belonged. Most of these suspect returns featured large business losses on Schedule C without any documentation substantiating the claimed losses. Inquiry letters requesting proof of the expenses and deductions claimed on either Schedule A or C of each of the returns were sent to each of the respective taxpayers associated with the returns. Ms. Bevan stated that the Revenue Department still issued final assessments to these taxpayers and never offered to waive the assessments in exchange for information on who prepared the taxpayers' returns. Many of the taxpayers responded to the inquiry letters indicating that they did not have any such proof of claimed expenses. Several of these taxpayers then identified Voncille Pompey as having prepared their respective returns.

One such taxpayer that identified Pompey as their tax preparer was D.T. D.T.'s 2019,

2020, and 2021 Alabama income tax returns each featured substantial business losses that resulted in large refund amounts. However, no substantiating documentation was submitted with any of his returns. The Department issued an inquiry letter requesting documentation supporting the business losses claimed on each of the returns, as well as corrected returns disallowing the business losses for lack of substantiating documentation. In response, D.T. called the Revenue Department. In this call, D.T. reported to the Revenue Department that Pompey had prepared the returns for each of the tax years, and that D.T. had never told Pompey about any large expenses for a business. However, about five months after this conversation, the Revenue Department received another call from D.T. in which D.T. stated that Pompey had not prepared D.T.'s returns, and that D.T. had never told the Revenue Department that Pompey prepared D.T.'s returns. Interestingly, this second call occurred shortly after the Revenue Department issued a billing letter to Pompey on October 20, 2022.

H.K. also identified Pompey as his tax preparer. Like D.T.'s returns, H.K.'s 2020 and 2021 Alabama returns each featured large business losses, as well as claimed deductions for dependents. In response to the Revenue Department's correspondence regarding his 2020 and 2021 returns, H.K. called the Revenue Department and stated that he paid Pompey to prepare his tax returns but never told Pompey that he had a business or any dependents. H.K. then submitted a Tax Return Preparer Complaint form to the Revenue Department on July 27, 2022. In this Complaint, H.K. stated that he "[p]aid \$300 yearly for preparer to file taxes [,]" and that he "[f]ound out in 2022 [that he] had unknown dependents and business losses," despite not having a business. H.K. also provided a

screenshot of two \$300.00 payments he made to Pompey on March 11, 2020, and March 10, 2021, via CashApp. Additionally, H.K.'s 2020 and 2021 returns were filed from the same IP address as the one that filed D.T.'s returns.

Three other taxpayers identified Pompey as having prepared their initial returns, which each featured substantial business losses that the respective taxpayers claimed did not exist. D.M.'s 2019, 2020, and 2021 returns each claimed a large business loss for a janitorial business with no income. Each of these returns were filed from the same IP address as the returns of D.T. and H.K. D.M. responded to the Revenue Department's inquiry letter, indicating that D.M. had paid Pompey to prepare each of D.M.'s returns and providing Pompey's address. D.P.'s 2021 return also was filed from the same IP address and included a federal tax deduction as well as another large business loss. D.P. reported to a Revenue Department field officer that she paid an individual named "Voncille" to file this return. Similarly to both D.M. and D.P., J.D. called the Revenue Department and reported that Pompey had filed J.D.'s 2020 and 2021 returns. However, like D.T., J.D. later called the Revenue Department, and then sent the Revenue Department a letter, stating that Pompey had not filed J.D.'s returns, and instead stating that J.D. had filed the returns. As with D.T., J.D.'s change of heart occurred after the Revenue Department had contacted Pompey regarding whether Pompey was a tax preparer.

At the time that the Revenue Department corresponded with the taxpayers identified previously, the Department corresponded directly with Pompey to discover whether Pompey was the return preparer for each of these taxpayers. Specifically, the Revenue Department requested in writing that Pompey submit Form AL8453 and official wage statements related

to the returns in question. The first few of these letters were issued on July 27, 2022, for H.K.'s 2020 and 2021 returns and D.P.'s 2021 return. Next, request letters for Form AL8453 relating to D.M.'s 2019, 2020, and 2021 returns were issued to Pompey on August 10, 2022. Then, on August 31, 2022, the Department issued Form AL8453 request letters to Pompey for D.T.'s 2019, 2020, and 2021 returns. On October 20, 2022, the Department issued billing letters to Pompey for the 2019, 2020, and 2021 tax years, imposing on Pompey penalties for violations of 26 U.S.C. §§ 6694(b) – preparer willful or reckless conduct, 6695(a) – failure to furnish a copy of a return to the taxpayer, and 6695(d) – failure to retain a copy of a prepared return.

Pompey replied to the Revenue Department's Form AL8453 request letters on November 16, 2022. In her reply, Pompey requested an explanation for the letters and stated that she could not provide "a copy of anyone's tax return" and that "I'm not a tax preparer." Instead, she stated that "I can tell [taxpayers] some free sites to go on so that they can prepare their own taxes . . . and with these there's a fee to file a state return and they must pay with their credit card to file a state return." On November 21, 2022, the Revenue Department responded to Pompey's reply, requesting Pompey to explain "why . . . individuals [would] seek your guidance about getting their taxes prepared?" The Department further stated that its records indicated Pompey had been giving tax preparation guidance since 2017, and that Pompey had been paid to prepare several returns between 2019 and 2021. Finally, the Department stated that Pompey had failed to respond to the Department's Form AL8453 request letters, that Pompey had not been authorized to electronically file returns, and that Pompey never provided a copy of returns to the

associated taxpayers, each of which warranted the assessed penalties.

The Revenue Department then issued preliminary assessments against Pompey for the 2019, 2020, and 2021 tax years on April 4, 2023. Pompey submitted a petition for review of the preliminary assessments to the Revenue Department, and a conference was held before the Revenue Department's Income Tax Hearing Officer on September 6, 2023. According to the Hearing Officer's report, Ms. Pompey stated that she was not a paid tax preparer and instead "would simply answer tax questions when someone called her and offer them [advice] concerning how and where to find the answers to their questions." However, the Hearing Officer found no adjustments were warranted because the Revenue Department had "received affidavits from several taxpayers stating Ms. Pompey did prepare their returns and payment was rendered for the services."¹ The Department then issued final assessments for the 2019, 2020, and 2021 tax years each consisting entirely of paid tax preparer penalties. Ms. Pompey timely appealed the final assessments to the Tax Tribunal.

Analysis

Pursuant to Ala. Code § 40-2A-11.1, the Revenue Department assessed Pompey penalties in accordance with 26 U.S.C. §§ 6694(b), 6695(a), and 6695(d). Specifically, Ala. Code § 40-2A-11.1(a) reads as follows:

For purposes of the individual income tax imposed by Chapter 18, if there is an understatement of liability on a return that would cause a tax return preparer to be subject to the penalties imposed by 26 U.S.C. § 6694, except § 6694(c), § 6700, or § 6701, and if any of the failures enumerated in 26 U.S.C. § 6695, except § 6695(e) and (g), occur[], the department may impose upon the tax return preparer a penalty in accordance with 26 U.S.C. §§ 6694(a), (b), (d), (e), and (f); §§ 6695(a), (b), (c), (d), and (f); §§ 6696(a) and (c), § 6700, and § 6701, as in effect from time to time.

¹ No such affidavits were submitted to the Tax Tribunal.

Section 6694(b) of the Internal Revenue Code (“IRC”) levies a penalty for an understatement of tax liability due to willful or reckless conduct by a tax preparer, as follows:

(1) In general

Any tax return preparer who prepares any return or claim for refund with respect to which any part of an understatement of liability is due to a conduct described in paragraph (2) shall pay a penalty with respect to each such return or claim in an amount equal to the greater of-

(A) \$5,000, or

(B) 75 percent of the income derived (or to be derived) by the tax return preparer with respect to the return or claim.

(2) Willful or reckless conduct

Conduct described in this paragraph is conduct by the tax return preparer which is-

(A) **a willful attempt in any manner to understate the liability for tax on the return or claim,** or

(B) **a reckless or intentional disregard of rules or regulations.**

(emphasis added). IRC § 6695(a) imposes a \$50 per-return penalty on a tax return preparer who fails to furnish a completed copy of a return to the associated taxpayer. And IRC § 6695(d) imposes a \$50 per-incident penalty if a tax return preparer fails to retain a completed copy of a return or a list identifying taxpayers for whom returns were prepared.

As stated, the first issue here is whether Ms. Pompey was a tax return preparer. Ala. Code § 40-2A-11.1(e) defines a “tax return preparer” as follows:

. . . an individual who prepares for compensation, or who employs one or more individuals who prepare for compensation, a tax return or a claim for refund of tax. The preparation of a substantial part of a return or claim for refund is treated as if it were the preparation of the entire return or claim for refund. An individual is not considered a tax return

preparer merely because the individual does any of the following:

- (1) Furnishes typing, reproducing, or other mechanical assistance.
- (2) Prepares a return or claim for refund of the employer, or an officer or employee of the employer, by whom the individual is regularly and continuously employed.
- (3) Prepares a return or claim for refund of any person as a fiduciary for that person.
- (4) Prepares a claim for refund for a taxpayer in response to an assessment issued to the taxpayer.

(emphasis added).

In response to the Revenue Department's position, Ms. Pompey argues that she was not a paid tax preparer but merely "helped" individuals file their tax returns on occasion and, in exchange, she would ask for "donations." Pompey further argues that she only helped with federal returns and never touched state returns, instead leaving the state returns solely to the taxpayers. Pompey does not dispute that she failed to furnish either her client-taxpayers or the Revenue Department copies of returns and/or retain such copies or a list of client-taxpayers, as required by 26 U.S.C. § 6695(a) and (d).

On appeal to the Tax Tribunal, a final assessment entered by the Revenue Department is presumed correct, and the burden of proving the assessment incorrect is upon the taxpayer. *See* Ala. Code § 40-2A-7(b)(5)c.3. The evidence presented by the Revenue Department at the trial of this case, along with the testimony of Ms. Pompey, showed that Ms. Pompey acted as a tax return preparer for various individuals for the 2019, 2020, and 2021 tax years, and that she either willfully understated the liability of the individuals she assisted, or that she recklessly or intentionally disregarded rules or regulations applicable to the preparation of these individuals' returns, including the record-keeping requirements

of IRC § 6695(d). Therefore, Ms. Pompey is subject to the tax preparer penalties of the Internal Revenue Code incorporated by Ala. Code § 40-2A-11.1.

The Revenue Department presented evidence at trial that five individuals had identified Pompey as the person whom they paid to prepare their tax returns. The retractions of D.T. and J.D. are suspect at best given the Revenue Department's contemporaneous record-keeping of its communications with each of the individuals claiming to have been assisted by Pompey, as well as the convenient timing of the retractions. Pompey even acknowledged that she reached out to J.D. after receiving the Revenue Department's correspondence regarding J.D.'s return.²

Pompey's other trial testimony revealed several inconsistencies that, at the least, called into question her credibility. Specifically, she claimed at varying times that (1) she "did not prepare taxes or state taxes,"³ (2) she only helped in the setup of free accounts on tax filing websites,⁴ (3) that she would "just show[] [the taxpayers] how to go online and [file their taxes],"⁵ (4) that she would direct the individuals she helped as to how and where to enter data on their returns,⁶ and (5) that she would enter the numbers into the returns herself.⁷ While Pompey maintained throughout most of the trial that she helped people prepare only their federal returns, she eventually conceded that she would help people do both their federal and state returns.⁸

² Ala. Tax Trib. Trial Tr. 153 ¶ 6-19, Aug. 15, 2024

³ See, e.g., Ala. Tax Trib. Trial Tr. 12 ¶ 14-16.

⁴ See, e.g., Ala. Tax Trib. Trial Tr. 12 ¶ 20-23; 14 ¶ 10-12.

⁵ See, e.g., Ala. Tax Trib. Trial Tr. 14 ¶ 10-15; Ala. Tax Trib. Trial Tr. 25 ¶ 19 to 26 ¶ 5.

⁶ See, e.g., Ala. Tax Trib. Trial Tr. 17 ¶ 5-12; Ala. Tax Trib. Trial Tr. 26 ¶ 6-13; Ala. Tax Trib. Trial Tr. 187 ¶ 12-14.

⁷ Ala. Tax Trib. Trial Tr. 201 ¶ 17 - 202 ¶ 5.

⁸ Ala. Tax Trib. Trial Tr. 188 ¶ 14 - 189 ¶ 7.

Taken individually or cumulatively, these inconsistencies cannot defeat the Revenue Department's representation that each of D.T., H.K., D.M., D.P., and J.D. had identified Pompey as the one they paid to prepare and file their returns, and that each of them claimed they had not directed Pompey to include any large deductions or expenses, although Pompey contradicted those claims.⁹ As cited previously, Ala. Code § 40-2A-11.1(e) includes in its definition of a tax return preparer that “[t]he preparation of a substantial part of a return or claim for refund is treated as if it were the preparation of the entire return or claim for refund.” Here, both the evidence presented by the Revenue Department as well as Pompey's concessions indicate that Pompey assisted in the preparation of at least a substantial part of the returns filed by D.T., H.K., D.M., D.P., and J.D. Thus, Pompey was a tax return preparer.

Next, Pompey's characterization of the payments she received as “donations” is, not surprisingly, ineffective to escape the assessed penalties. She initially claimed that she was never paid any money for preparing anyone's state return.¹⁰ Later she claimed that, after helping someone, she would ask them to pay her a “donation” in an amount that varied depending on the extent to which she had to help them.¹¹ In other words, Pompey would *provide a service* and then *request and receive payment for that service*, and the amount of the payment would be customized to correspond with the extent of the service she provided. Therefore, Pompey was a *paid* tax return preparer.

Pompey argued at trial that she should not be subject to the 26 U.S.C. § 6694(b)

⁹ Ala. Tax Trib. Trial Tr. 190 ¶ 2-10

¹⁰ Ala. Tax Trib. Trial Tr. 8 ¶ 15-17

¹¹ Ala. Tax Trib. Trial Tr. 186 ¶ 8-19. Pompey later refuted that she “asked” for donations; instead, people she helped could just give her donations once she finished helping them. See Ala. Tax Trib. Trial Tr. 189 ¶ 10-22.

penalties because she did not act willfully or recklessly in a manner that led to an understatement of any individual's tax liability. Specifically, she testified that she was "not reckless about putting anything on someone's tax return without their knowledge."¹² However, Pompey also conceded that she never had any training or education in filing or preparing tax returns. Instead, she stated she would "just Google stuff."¹³ Her testimony that she would not put "anything on someone's tax return without their knowledge" also is directly contradicted by the Revenue Department's representations of its communications with D.T., H.K., D.M., D.P., and J.D. The Revenue Department established that each of these individuals had represented directly to the Department that they did not know why there were large deductions or expenses claimed on their returns when they identified Pompey as having prepared their tax returns. Therefore, Pompey was a *paid tax return preparer* who either *willfully* understated the tax liabilities shown on the returns she prepared, or *recklessly or intentionally* disregarded applicable rules when preparing the returns.¹⁴

Thus, the penalties assessed by the Revenue Department pursuant to 26 U.S.C. § 6694(b) are due to be affirmed. Next, Ms. Pompey did not explicitly argue against the imposition of penalties pursuant to 26 U.S.C. § 6695(a), nor did she provide any proof that she provided the individual taxpayers with copies of their returns. Therefore, she has not overcome the presumption of correctness of the final assessments as to this issue, and the

¹² Ala. Tax Trib. Trial Tr. 199 ¶ 20-22.

¹³ Ala. Tax Trib. Trial Tr. 31 ¶ 19-21.

¹⁴ Neither Ms. Pompey nor the Revenue Department presented any third-party witnesses or affidavits supporting their claims. Such evidence may have substantiated either party's claim against the other because such a witness or affidavit could have provided the perspective of the individual whose return was submitted by Ms. Pompey.

imposition of these penalties is due to be affirmed. Finally, as Ms. Pompey does not dispute that she failed to retain copies of returns she prepared or other identifying information, as required by 26 U.S.C. § 6695(d), the penalties assessed by the Department under § 6695(d) also are due to be affirmed.

Therefore, the 2019, 2020, and 2021 final assessments in issue are affirmed.

Judgment is entered against Ms. Pompey and in favor of the Revenue Department in the amounts of \$5,100 for year 2019, \$10,200 for year 2020, and \$10,250 for year 2021, plus additional interest that continues to accrue until the liabilities are paid in full.

It is so ordered.

This Opinion and Final Order may be appealed to the appropriate circuit court within 30 days, pursuant to Ala. Code § 40-2B-2(m).

Entered November 19, 2024.

/s/ Jeff Patterson
JEFF PATTERSON
Chief Judge
Alabama Tax Tribunal

jp:thb

cc: Voncille Pompey
David E. Avery, III, Esq.