



FILED

MAY 06 2021

Georgia Tax Tribunal Administrator

BEFORE THE GEORGIA TAX TRIBUNAL
STATE OF GEORGIA

JORDAN WEBB,

Petitioner,

v.

DAVID CURRY, in his official
capacity as Commissioner of the
GEORGIA DEPARTMENT OF
REVENUE,

Respondent.

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DOCKET NO. 2033058

ORDER

Petitioner filed a petition to the Georgia Tax Tribunal appealing Respondent's assessment for withholding tax for tax periods between January 1, 2019 and June 30, 2019. A hearing was held before the Tribunal on April 6, 2021. Petitioner was represented by Danielle Brand, senior attorney at the law firm Wiggam & Geer, LLC. Respondent was represented by Mitchell Watkins, assistant attorney general from the State of Georgia.

After careful consideration of the testimony and argument of the parties, and based on the following findings of fact and conclusions of law, Respondent's assessment is **AFFIRMED**.

I. Findings of Fact

1.

On February 3, 2020, Petitioner, Jordan Webb, was issued an Official Assessment and Demand for Payment, Letter ID No. L0696178376, for withholding tax for tax periods between January 1, 2019 and June 30, 2019. Respondent's Exhibit A at 6-7. The Department introduced into evidence Georgia Department of Revenue Forms G-7, Quarterly Return for Monthly Payer,

for the tax period ending on March 31, 2019, and the tax period ending June 30, 2019. Respondent's Exhibit A at 11, 12.

2.

On January 17, 2019, Petitioner executed Georgia Department of Revenue Form CRF-005, Responsible Party Information, for Hicks Roofing, Inc. Respondent's Exhibit A at 9. On this form, Petitioner identified himself as the president of the company and indicated that he was responsible for filing the company's business taxes and/or paying all sales and use tax, and withholding tax due. Id. Petitioner additionally identified Jules Myrtle, a director, as a responsible party. Id.

3.

On that same day, January 17, 2019, Petitioner executed a Georgia Department of Revenue Form GA-9465, Installment Agreement Request, for tax periods March 2018 to September 2018. Respondent's Exhibit A at 10. Petitioner requested to pay \$3,000.00 monthly for these periods and provided a routing and account number for a checking account at Fidelity Bank. Id.

4.

Petitioner submitted a corporate structure chart of Hicks Roofing, Inc., Petitioner's Exhibit 1, which Petitioner testified was prepared by his father and CEO of the company, Michael Webb. Hearing Transcript at 29:30 et seq. In the organizational chart, dated February 4, 2019, Petitioner is described as executive vice president of the company. Petitioner's Exhibit 1. According to the organizational chart, the following positions reported to Petitioner: Sr. Account Manager, Sales; Account Manager, Sales; Director, Residential Sales; Commercial Service Manager; Call Center Manager, Sales. Id. Petitioner testified that, although he would not have described himself as the

president of the company, he would have been described as the president of the Georgia division of the company. Hearing Transcript at 14:25 et seq.

5.

Petitioner testified that his position with the company, at the time that he signed Forms CRF-005 and GA-9465, was president of the company's Georgia division; that Petitioner's brother, Jason Webb, was president of the Florida division of the company; and that his father, Michael Webb, was CEO. Subsequently Petitioner's position was changed to divisional vice president and executive vice president, but his role remained the same: Petitioner was responsible for sales and service. Hearing Transcript at 4:26; 26:50 et seq.

6.

Petitioner maintains that his father primarily owned and operated the company. Hearing Transcript at 1:40; 4:30 et seq. Petitioner claims that he discussed the tax matter, and submitted the installment agreement, with the Georgia Department of Revenue only on behalf of his father. Hearing Transcript at 4:52; 6:08 et seq. Petitioner testified that he had no responsibility for reviewing the withholding tax returns and that he was to review and sign checks at his father's direction. Hearing Transcript at 8:24 et seq. Petitioner informed the Department that his father would have to review and approve and authorize the arrangement of payments. Hearing Transcript at 10:45 et seq. After the Department approved the installment payment arrangement, Petitioner's father made the payments. Hearing Transcript at 12:00 et seq.

7.

Petitioner also submitted a Confidential Settlement Agreement and General Release. Petitioner's Exhibit 2. In this document, executed by Petitioner on August 15, 2019, between Michael Webb as CEO of Hicks Roofing, Inc., a Georgia company, and Petitioner, Petitioner

agreed to sell the shares in the company that he held as minority shareholder and resigned his employment as an officer of the company, effective August 15, 2019. Id. at 1, 4, 6.

II. Conclusions of Law

1.

A tax assessment by the Department of Revenue is deemed prima facie correct, and the burden of persuasion in an appeal thereof is put on the taxpayer to show errors or unreasonableness in the assessment. See Blackmon v. Ross, 123 Ga. App. 89 (1970); Hawes v. LeCraw, 121 Ga. App. 532 (1970). As explained by the Georgia Court of Appeals:

[T]he burden of proof is on the taxpayer from the beginning . . . and that burden remains on him to . . . show clear and specific error or unreasonableness in the Commissioner's deficiency assessment. This placing of the burden is justified by the fact that the taxpayer is the moving party in contesting the validity of the assessment and has in his possession the information necessary for such contest.

Undercofler v. White, 113 Ga. App. 853, 855 (1966). To prevail, Petitioner must demonstrate by a preponderance of the evidence that the assessed taxes in dispute are in error or unreasonable.

2.

O.C.G.A. § 48-2-52 provides:

An officer or employee . . . of any corporation . . . who has control or supervision of collecting from purchasers or others amounts required under this title or of collecting from employees any taxes required under this title, and of accounting for and paying over the amounts or taxes to the commissioner, and who willfully fails to collect the amounts or taxes or truthfully to account for and pay over the amounts or taxes to the commissioner, or who willfully attempts to evade or defeat any obligation imposed under this title, shall be personally liable for an amount equal to the amount evaded, not collected, not accounted for, or not paid over.

Id., § 48-2-52(a). By regulation, the Department has articulated this test in plainer terms: "1) the person must be 'responsible,' and 2) the nonpayment of the tax must be 'willful.'" Ga. Comp. R. & Regs. 560-1-2-.01(4).

3.

Looking to the first prong of this test, a “Responsible Party” is “[a] person who has control over, or entitlement to, the funds or assets of the entity, such that the person has the ability to directly or indirectly control, manage, or direct the disposition of the entity’s funds and/or assets.”

Id. at (5)(a). Indicia of responsibility include, but are not limited to:

- (i) Holding the position of officer, director, partner, member, manager, or principal;
- (ii) Duties described by corporate by-laws, corporate operating agreement, partnership agreement, or other entity records;
- (iii) Day-to-day involvement in or responsibility for management of the business;
- (iv) Control over financial affairs and payment of debts;
- (v) Signing tax returns;
- (vi) Ability to hire and fire employees;
- (vii) Authority to sign checks or otherwise make payments on behalf of the entity;
- (viii) Knowledge of failure to pay the tax; and
- (ix) Receipt of substantial income or benefits from the entity.

Id. at (5)(c)(1).

4.

The Tribunal finds that these indicia of responsibility are met in the present instance. Petitioner was a minority shareholder in the company, held corporate office, and by his own admission had the authority to meet with the Department of Revenue to discuss the company’s failure to pay withholding tax for previous periods. Hearing Transcript at 33:40 et seq. Petitioner also submitted a request for an installment agreement to pay these taxes and provided the company’s checking account information at Fidelity Bank. Respondent’s Exhibit A at 10. Likewise, Petitioner identified himself as the “[p]erson(s) responsible for filing your business’ returns and/or paying all tax or charges due” when completing Georgia Department of Revenue

Form CRF-005. Id. at 9. Accordingly, the Tribunal finds that Petitioner was a Responsible Party and accordingly had a duty to collect, account for, or pay over Georgia withholding tax.

5.

Turning to the second prong of the test, “[a] Responsible Party’s nonpayment of the tax will be willful if the failure to pay the tax is voluntary and knowing, or reckless. Willfulness does not require a bad motive or intent to defraud the state.” Ga. Comp. R. & Regs. 560-1-2-.01(6); see Blackmon v. Mazo, 125 Ga. App. 193, 196 (1971) (“Wilful (sic) as here used does not carry with it connotations of bad motives, fraud, or an intent to deprive the State of its tax claim.”) (citations omitted). Examples of reckless disregard that constitute willfulness include, but are not limited to, “ignoring an obvious risk of nonpayment, failing to investigate a risk of nonpayment, or failing to inquire into the status of taxes when the entity is in financial trouble.” Ga. Comp. R. & Regs. 560-1-2-.01(6)(c).

6.

Petitioner acted with reckless disregard of the known risk that Hicks Roofing, Inc. was not remitting its owed withholding taxes. Petitioner met with the Department to discuss previous periods of withholding tax which the company failed to remit. Hearing Transcript 33:07 et seq. Further, at the meeting on January 17, 2019, which is within the periods assessed against Petitioner by the Department, Petitioner indicated that he was a responsible party within the meaning of O.C.G.A. § 48-2-52 for the company’s withholding tax liabilities. Further, the confidential settlement agreement submitted by Petitioner was not signed until August 15, 2019, which is after the assessment period. As such, Petitioner, through reckless disregard, acted willfully for purposes of the statute. Thus, Petitioner must be held liable for the unpaid tax periods for which he was a responsible person, even though he may have been unaware at that time that the taxes were unpaid.

7.

Accordingly, Petitioner has failed to show by a preponderance of the evidence that he lacked willfulness as a responsible person in failing to pay the periods from January 1, 2019 to June 30, 2019, as set forth in the Official Assessment, and has therefore failed to show that Official Assessment and Demand for Payment, Letter ID No. L0696178376, issued by the Department is incorrect or unreasonable.

III. Decision

For the foregoing reasons, the Official Assessment and Demand for Payment Letter ID No. L0696178376 is **AFFIRMED**, and judgment is rendered in favor of Respondent.

This 6 day of May, 2021.



Hon. Lawrence E. O'Neal, Jr.
Chief Judge, Georgia Tax Tribunal