



BEFORE THE GEORGIA TAX TRIBUNAL  
STATE OF GEORGIA

DEC 18 2024

TANDA L. HOGG

Petitioner,

v.

FRANK M. O'CONNELL, in his official  
capacity as COMMISSIONER, GEORGIA  
DEPARTMENT OF REVENUE,

Respondent.

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Docket No.: 2421429

  
Clara Davis, Tax Tribunal Administrator

**DECISION**

**I. Introduction**

A specially set hearing for this matter was held before the Georgia Tax Tribunal on November 14, 2024. J.T. Kim, Esq. appeared on behalf of the Georgia Department of Revenue, (hereafter “Respondent” or “the Department”), and Ms. Tanda L. Hogg (“Petitioner”) represented herself pro se. The Petition in this case challenges Respondent’s issuance of a Notice of State Tax Execution, Letter ID No. L2135773808, for withholding tax for the tax periods ending September 30, 2020, December 31, 2020, September 30, 2021, December 31, 2021, September 30, 2022, December 31, 2022, March 31, 2023 (the “unpaid tax period”). The issue in this case is whether Petitioner meets the requirements to be held as a Responsible Party liable for withholding tax due. 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 and issuance of the notice of state tax execution is **AFFIRMED**.

**II. Findings of Fact**

1.

Petitioner was the person who filed withholding tax returns and paid withholding tax on

behalf of ECI Contracting Group, Inc. (“ECI”). The withholding tax returns were filed under Petitioner’s Georgia Tax Center (“GTC”) account. (Respondent’s Exhibit A; Respondent’s Exhibit H).

2.

Petitioner signed two Installment Payment Agreements on behalf of ECI on 2/26/21 and 5/6/22. Petitioner testified that she understood the purpose of the agreements but did not know that she could be held personally liable. (Testimony of Petitioner).

3.

Petitioner was employed by ECI as an independent contractor and received compensation for the services she provided during the unpaid tax period. Petitioner had an ECI company email address and corresponded with the Department about when payments would be made. (Respondent’s Exhibit H).

4.

Petitioner was aware that ECI was delinquent on its withholding tax payments. (Testimony of Petitioner).

5.

Department witness, Chrstine Powell, testified that Petitioner signed Installment Payment Agreements on behalf of ECI and was identified by the Department as a Responsible Party. (Testimony of Christine Powell).

### **III. Conclusions of Law**

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.

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).

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).

The Tribunal finds that a sufficient number of these indicia of responsibility are met in the present case. During the periods in question, Petitioner was the person who filed withholding tax returns and paid withholding taxes using her GTC account on behalf of ECI. Petitioner signed Installment Payment Agreements on behalf of ECI and testified that she understood the purpose of the agreements. Petitioner was employed by the company as an independent contractor and received compensation for the services she provided. Petitioner had an ECI company email address and corresponded to the Department about when payments would be made. Finally, Petitioner was aware that ECI was delinquent on its withholding tax payments. Accordingly, the Tribunal finds that Petitioner was a Responsible Party and thus had a duty to collect, account for, or pay over Georgia withholding tax.

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) (“Willful as here used does not carry with it connotations of bad motives, fraud, or an intent to deprive the State of its tax claim.”) “Reckless disregard for the duty to pay the tax can constitute willfulness. Examples of such reckless disregard 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)(a).

The Tribunal finds that there was a willful failure to pay the withholding tax due by Petitioner. Petitioner’s actions in this case are consistent with the regulatory definition of reckless

disregard. Petitioner was aware of ECI's delinquency in paying its withholding taxes and signed payment plan agreements on ECI's behalf. While Petitioner testified that she did not know that she could be held personally liable for the delinquent payments, Petitioner's failure to investigate the legal ramifications of the documents she was signing provide further evidence of recklessness. Thus, Petitioner must be held liable for the unpaid tax period for which she was a Responsible Party, even though she did not act with a bad motive or intent to defraud the state.

Accordingly, Petitioner has failed to show by a preponderance of the evidence that she lacked willfulness as a Responsible Party in failing to pay the unpaid tax period, as set forth in the notice of state tax execution and has therefore failed to show that the Notice of State Tax Execution, Letter ID No. L2135773808, issued by the Department is incorrect or unreasonable.

#### **Conclusion**

For the foregoing reasons, the Notice of State Tax Execution, Letter ID No. L2135773808 is **AFFIRMED**, and judgment is rendered in favor of Respondent.

**SO ORDERED**, this 18<sup>th</sup> day of December, 2024.

  
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**LAWRENCE E. O'NEAL, JR.**  
**CHIEF JUDGE**  
**GEORGIA TAX TRIBUNAL**