

LISA LEWANDOWSKI
706 Norway Street
Iron Mountain, MI 49801,

Taxpayer,

v.

STATE OF ALABAMA
DEPARTMENT OF REVENUE.

STATE OF ALABAMA
DEPARTMENT OF REVENUE
ADMINISTRATIVE LAW DIVISION

DOCKET NO. P. 00-313

FINAL ORDER

The Revenue Department assessed a 100 percent penalty against Lisa Lewandowski (ATaxpayer@), as a person responsible for paying the withholding taxes of L.A.R. Rebar, Inc. (Acorporation@), for the year 1996, and the quarters ending September 1996, March 1997, and September 1997. 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 August 1, 2000. The Taxpayer was notified of the hearing by certified mail, but failed to appear. Assistant Counsel David Avery represented the Department.

The Taxpayer does not argue that she was not responsible for paying the corporation's withholding tax liability to the State. Rather, she claims that the corporation closed on August 15, 1996, and thus did not have a payroll during the periods in issue. The issue thus is whether the corporation operated and withheld taxes from its employees' wages during the periods in question.

The Taxpayer, as president of the corporation, signed the corporation's Alabama withholding tax application in 1992.

The corporation filed a withholding tax return with the Department for the quarter ending September 30, 1996 showing tax withheld of \$1,121.75. The corporation submitted

a check in that amount signed by the Taxpayer on October 15, 1996. The check was returned by the corporation's bank for insufficient funds.

The corporation filed a withholding tax return with the Department for the quarter ending March 1997 showing tax withheld of \$97.08. That amount was not paid.

The corporation filed a withholding tax return with the Department for the quarter ending June 1997 showing tax withheld of \$459.29. The corporation submitted a check in that amount signed by the Taxpayer on August 7, 1997. That check was also returned for insufficient funds.

The corporation filed a withholding tax return with the Department for the quarter ending September 1997 showing tax withheld of \$266.38. That amount was not paid.

The Department also submitted into evidence seven 1997 W-2 wage and tax statements indicating that the corporation had withheld Alabama income tax from its employees' wages in that year.

A final assessment on appeal is *prima facie* correct, and the burden is on the taxpayer to prove the assessment is incorrect. Code of Ala. 1975, ' 40-2A-7(b)(5)c. In this case, the Taxpayer claims the corporation ceased operating in August 1996. The above facts, however, indicate that the corporation operated and withheld taxes from its employees' wages in 1996 and 1997. The fact that the Taxpayer signed at least two checks during the subject periods shows that she was still involved in the business. The Taxpayer failed to present evidence to the contrary.

The *prima facie* correct final assessment is affirmed. Judgment is entered against the Taxpayer for \$6,604.42. Additional interest is also due from the date of entry of the

final assessment, April 19, 2000.

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

Entered August 7, 2000.

BILL THOMPSON
Chief Administrative Law Judge