

ALABAMA TAX TRIBUNAL

BOAZ TAX SERVICE, INC.,	§	
Taxpayer,	§	DOCKET NO. P. 23-741-JP
v.	§	
STATE OF ALABAMA	§	
DEPARTMENT OF REVENUE		

OPINION AND FINAL ORDER

This appeal involves the entry by the Alabama Department of Revenue of a final assessment of paid tax preparer penalty for 2019. A trial was held on May 8, 2025. The Taxpayer was represented by its owner, Keith Cahela, and the Revenue Department was represented by David Avery. Ms. LaShena Davis testified for the Revenue Department.

The facts show that a former co-owner of the Taxpayer prepared a 2019 Alabama individual income tax return for a husband and wife client and filed the return electronically with the Alabama Department of Revenue. With that return, a Schedule C form was included that showed gross receipts of \$1,421.00 and business expenses of \$13,354.00, resulting in a claimed loss of \$11,933.00. The Revenue Department disallowed the loss because the expenses were not verified. The disallowance resulted in the clients' claimed refund being eliminated and a preliminary assessment being entered against the individuals for additional tax due. The Taxpayer's clients whose individual income tax return was filed by the Taxpayer petitioned the Revenue Department for a review of the preliminary assessment and stated in writing that "we

were put down for a business that we have never had by our tax preparer...she has been using Schedule C without our knowledge for years 2019, 2020 and 2021.” The Revenue Department entered the final assessment in issue here for \$5,050.00, consisting of a \$5,000.00 “willful or reckless conduct” penalty and a \$50.00 penalty for failing to retain a copy of Form AL8453 showing the individuals’ authorization for the tax-return preparer to file the individuals’ return electronically. The Taxpayer produced a signed copy of Form AL8453 during this appeal, so the Revenue Department agrees that the \$50.00 penalty should be waived. Therefore, that penalty is waived.

The following excerpt from *Voncille Pompey v. State of Alabama Department of Revenue*, Ala. Tax Tribunal, P. 23-1048-JP, Opinion and Final Order (November 19, 2024), is instructive:

“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.

[Ala. Code § 40-2A-11.1(a)]

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.”

Pompey at 6-7.

Here, the evidence is undisputed that the Taxpayer (the tax-return preparer) engaged in “(A) a willful attempt in any manner to understate the liability for tax on the return or claim, or [prepared a return with] (B) a reckless or intentional disregard of rules or regulations.” 26 U.S.C. § 6694(b)(2).

The individuals for whom the return was prepared by the Taxpayer stated to the Revenue Department in writing that they had no such business as the one referenced

on the Schedule C. And the individuals notified the Revenue Department that the false reporting continued on subsequent years' returns.

Code of Alabama § 40-2A-7(b)(5)c.3. states the following: "On appeal to the ...Tax Tribunal, the final assessment shall be prima facie correct, and the burden of proof shall be on the taxpayer to prove the assessment is incorrect." Here, at trial, the Taxpayer offered no evidence nor any rebuttal of the final assessment aside from the submission of Form AL8453.

The \$50.00 penalty concerning the retention of Form AL8453 is waived. The \$5,000.00 penalty is valid and is upheld. Therefore, the final assessment, as reduced, is upheld in the amount of \$5,000.00, plus additional interest that continues to accrue until the liability is paid in full.

Judgment is entered accordingly.

It is so ordered.

Entered May 13, 2025.

/s/ Jeff Patterson

JEFF PATTERSON

Chief Judge

Alabama Tax Tribunal

cc: Boaz Tax Service
David E. Avery III, Esq.