

1995 (\$5520.16), December 31, 1996 (\$242.90), March 31, 1997 (\$3998.15), June 30, 1997 (15,366.50), September 30, 1997 (\$16,336.77), and December 31, 1997 (\$18,648.86). The plaintiff made a payment of \$300 on this assessment on October 22, 2001, and thereafter filed this action seeking a refund of that payment. The United States counterclaimed for the balance of the assessment, plus interest and costs. After conducting discovery, the parties filed cross motions for summary judgment pursuant to Federal Rule of Civil Procedure 56. The motions have been briefed and are ripe for decision.¹

The undisputed facts in the summary judgment record show that Black Bear Coal Corporation, a Virginia corporation, was engaged in the coal mining business in Buchanan County, Virginia. The plaintiff's husband, Earnest Layne, was the president and sole stockholder of the corporation. The plaintiff was secretary and treasurer of the corporation until April of 1997, when she resigned, although she continued to sign documents on behalf of the corporation as an officer until November of 1997, and thereafter as a bookkeeper. The plaintiff prepared the checks for payment of corporate obligations, including the payroll checks. She also prepared

¹ I will dispense with oral argument because the facts and legal contentions are adequately presented in the materials before the court and argument would not significantly aid the decisional process.

and signed IRS Form 941 (withholding) tax returns on behalf of the corporation. The corporation paid the plaintiff \$300 per week for her services.

Although her husband actually signed the checks for the corporation that she had prepared, corporate resolutions filed with a financial institution gave her the authority to sign checks, as well as engage in other transactions on behalf of the corporation. The plaintiff was not actively involved in the operation of the business and she and her husband contend that only he made the decisions as to the payment of the corporate debts. The plaintiff admitted in her deposition that during “the last two quarters” she became aware of a “problem” with payment of the withholding taxes. (Mary Layne Dep. 20-21.)

An individual may be held personally liable for unpaid withholding taxes under the Internal Revenue Code. A statute provides that “[a]ny person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails” to do so shall be liable for “a penalty equal to the total amount of the tax” withheld from the government. I.R.C. § 6672(a). A person can be held liable only if she (1) is a “responsible person” under a duty to collect, account for, and pay over the tax, and (2) willfully fails to discharge her obligations as a responsible person. *See United States v. O’Connor*, 956 F.2d 48, 50 (4th Cir. 1992). Once assessed, the taxpayer has the burden of proof on both of these elements. *See id.* A number of factors have been

developed to assist in determining whether a person is a responsible person, but “the critical inquiry is ‘whether the person had the “effective power” to pay the taxes—that is, whether he had the actual authority or ability, in view of his status within the corporation, to pay the taxes owed.’” *Lyon v. United States*, 68 Fed. Appx. 461, 467 (4th Cir. 2003) (unpublished) (quoting *Vinick v. United States*, 205 F.3d 1, 8 (1st Cir. 2000)). The fact that a corporate officer had the necessary authority but failed to exercise it does not preclude a finding of responsibility. *See id.* at 468 (finding corporate officer to be a responsible person even though he left the determination as to which creditors to pay to his father).

Whether a responsible person has the necessary state of mind to act willfully under § 6672(a) is a “quintessential jury issue.” *Turpin v. United States*, 970 F.2d 1344, 1350 (4th Cir. 1992).

Based on my review of the present record, I find that this case is properly reserved for trial. Accordingly, it is **ORDERED** that the motions for summary judgment (Doc. Nos. 16, 21) are **DENIED**.

ENTER: November 10, 2003

United States District Judge