

SUPREME COURT OF OHIO

Nusseibeh v. Zaino

98 Ohio St. 3d 292 (Ohio 2003) · Decided March 12, 2003

SUMMARY

The Ohio Supreme Court considered whether Raed Nusseibeh, the sole corporate officer and shareholder of Nusseibeh, Inc., was personally liable for the corporation’s unpaid sales taxes under R.C. 5739.33. The court held that a sole corporate officer is responsible for the corporation’s fiscal responsibilities and cannot delegate that responsibility, affirming the Board of Tax Appeals’ decision.

CASE DETAILS

COURT	Supreme Court of Ohio
WRITING FOR THE COURT	Per Curiam; Moyer, C.J.; Resnick, J.; F.E. Sweeney, J.; Cook, J.; Lundberg Stratton, J.; O'Connor, J.; Pfeifer, J.
JURISDICTION	Ohio
DECIDED	March 12, 2003
DISPOSITION	affirmed
PROCEDURAL POSTURE	Appeal as of right from a decision of the Ohio Board of Tax Appeals affirming a derivative sales-tax assessment against Nusseibeh personally.
STANDARD OF REVIEW	The taxpayer challenging a tax assessment bears the burden of demonstrating how and to what extent the Commissioner's investigation, audit, findings, and assessment were faulty and incorrect. The Commissioner's findings are presumptively valid and will be upheld unless shown to be clearly unreasonable or unlawful; the BTA's decision is reviewed for reasonableness and lawfulness.
PRECEDENTIAL VALUE	Published opinion; precedential Ohio Supreme Court decision.
PARTIES	Raed Nusseibeh v. Zaino

TOPICS

- sales and use tax
- tax collection
- tax audits
- administrative law
- appellate procedure

PRACTICE AREAS

QUESTIONS PRESENTED

1. Whether a sole corporate officer and sole shareholder is personally liable under R.C. 5739.33 for the corporation's unpaid sales tax when he was the corporation's only officer responsible for its fiscal responsibilities.
2. Whether the Board of Tax Appeals properly affirmed the derivative sales-tax assessment under the applicable taxpayer burden and presumptive-validity standards.

HOLDINGS

1. When a corporation has only one corporate officer, that officer is responsible for executing the corporation's fiscal responsibilities, including paying the proper amount of sales tax, and may be held personally liable for the corporation's failure to file returns or remit tax.
2. In a proceeding concerning derivative personal liability under R.C. 5739.33, the underlying assessment against the corporation is not at issue once the corporation failed to object and the assessment became conclusive; the officer is bound by the corporation's failure to contest it.
3. The BTA properly affirmed the derivative assessment because Nusseibeh failed to demonstrate that the Tax Commissioner's assessment was erroneous, unreasonable, or unlawful.

KEY QUOTATIONS

“When there is only one corporate officer, that officer has the responsibility for the execution of the corporation’s fiscal responsibilities.” (¶ 14, 98 Ohio St. 3d at 294)

“This result may seem harsh, but Nusseibeh’s inattention to the business of Nusseibeh, Inc. cannot be used as a basis for avoiding personal liability.” (¶ 15, 98 Ohio St. 3d at 295)

“Accordingly, we hold that the decision of the Board of Tax Appeals is reasonable and lawful and affirm it.” (¶ 16, 98 Ohio St. 3d at 295)

FACTUAL BACKGROUND

Nusseibeh was the president, sole officer, and sole shareholder of Nusseibeh, Inc., which operated a grocery business and held the applicable vendor's license and liquor permit. Although Nusseibeh entered into an agreement to sell the business, the business continued operating under a management agreement using Nusseibeh, Inc.'s licenses, and Nusseibeh continued signing liquor-permit renewal applications. The corporation failed to pay the sales tax assessed for the relevant period, leading to a derivative assessment against Nusseibeh, who testified that he did not personally supervise the business's day-to-day operations.

PROCEDURAL HISTORY

The Tax Commissioner assessed sales tax against Nusseibeh, Inc. for January 1, 1994, through March 31, 1997. After the corporation did not contest or pay the assessment, the Commissioner issued a derivative assessment

against Raed Nusseibeh. Nusseibeh's petition for reassessment was denied, and the Board of Tax Appeals affirmed the assessment and denied reconsideration. The Supreme Court of Ohio affirmed the BTA's decision.

DISPOSITION

affirmed

CASES CITED

- Federated Dept. Stores, Inc. v. Lindley, 5 Ohio St. 3d 213, 450 N.E.2d 687 (Ohio 1983)
- Midwest Transfer Co. v. Porterfield, 13 Ohio St. 2d 138, 235 N.E.2d 511 (Ohio 1968)
- Hatchadorian v. Lindley, 21 Ohio St. 3d 66, 488 N.E.2d 145 (Ohio 1986)
- Rowland v. Collins, 48 Ohio St. 2d 311, 358 N.E.2d 582 (Ohio 1976)
- Spithogianis v. Limbach, 53 Ohio St. 3d 55, 559 N.E.2d 449 (Ohio 1990)