STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2002 CA 1955

J. ROGER BERGERON, IN HIS OFFICIAL CAPACITY AS DIRECTOR OF THE SALES TAX AND USE DEPARTMENT FOR THE PARISH OF WEST BATON ROUGE

VERSUS

PRESTON W. ALBERT, JR.

Judgment Rendered: NOV 21 2003

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On Appeal from the 18th Judicial District Court
In and for the Parish of Iberville
State of Louisiana
Suit No. 54,943, Division "B"

The Honorable J. Robin Free, Judge Presiding

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Preston W. Albert, Jr.

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BEFORE: FOIL, PETTIGREW, GAIDRY, McCLENDON, AND KLINE,[1] J.J.

Foil, J. Dissents
McClendon, J. Dissents and Assigns Reasons.

[1] The Honorable William F. Kline Jr., retired, is serving as judge *pro tempore* by special appointment of the Louisiana Supreme Court.

KLINE, J.

In this appeal, a corporate officer contests the imposition of corporate sales tax liability against him personally under La. R.S. 33:2845.1. For the following reasons, we affirm.

FACTS AND PROCEDURAL HISTORY

Preston W. Albert, Jr. was, at all pertinent times, president and chief executive officer, and a part owner of S&W Services, Inc. (S&W), an eighteen-wheeler repair service located in West Baton Rouge Parish (WBRP). Mr. Albert also had ownership interests in two interstate trucking companies, Tigator, Inc. (Tigator) and Bayou Kritter, Inc. (Bayou Kritter). S&W provided preventative maintenance and repair services to Tigator and Bayou Kritter, including the sale of all necessary parts.

Effective in July of 1996, the Louisiana Department of Revenue (Department) authorized and provided necessary documentation to Tigator and Bayou Kritter to allow these corporations to avoid paying sales tax to vendors on purchases of "tangible personal property that is to be used in the furtherance of ... interstate transportation business" in accordance with La R.S. 47:306.1.[2] Under La. R.S. 47:306.1, persons operating in

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[2] La. R.S. 47:306.1 provides:

> Persons, as defined in this Chapter, engaged in the business of transporting passengers or property for hire in interstate or foreign commerce, whether by railroad, railway, automobile, motor truck, boat, ship, aircraft or other means, may, at their option under rules and regulations prescribed by the collector, register as dealers and pay the taxes imposed by R.S. 47:302 A on the basis of the formula hereinafter provided.
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> Such persons, when properly registered as dealers, may make purchases in this state or import property into this state without payment of the sales or use taxes imposed by R.S. 47:302 A at the time of purchase or importation, provided such purchases or importations are made in strict compliance with the rules and regulations of the collector. Thereafter, on or before the 20th day of the month following the purchase or importation, the dealer shall transmit to the collector, on forms secured by him, returns showing gross purchases and importations of tangible personal property, the cost price of which has not previously been included in a return to the state. ***The amount of such purchases and importations shall be multiplied by a fraction, the numerator of which is Louisiana mileage operated by the taxpayer and the denominator of which is the total mileage, to obtain the taxable amount of tax basis***. This amount shall be multiplied by the tax rate to disclose the tax due. [Emphasis supplied.]

interstate or foreign commerce are allowed to obtain such an "exemption" from payment of sales tax.[3] It is not a total exemption, because the taxpayer has to remit sales tax to the Department in accordance with the formula set forth in the statute.

All three of Mr. Albert's corporations took the position that parts sold by S&W that were installed by S&W on Tigator's and Bayou Kritter's eighteen-wheelers were "tangible personal property," for use in interstate commerce, on which no sales tax was owed to the vendor, S&W. Beginning in September of 1996,[4] S&W stopped collecting and remitting sales tax on parts sold to Tigator and Bayou Kritter. Because of a limitation with their invoicing software,[5] S&W's tax/business consultant, Mr. Ordrie Ortego, testified that for invoicing purposes, S&W fictitiously assumed that all sales were comprised of fifty percent parts and fifty percent labor.[6] Since S&W could only collect sales tax on labor, due to their understanding with Tigator and Bayou Kritter, S&W collected sales tax that amounted to 4% of each invoice total. S&W maintained that one-half of the amount of sales tax collected was for the State of Louisiana and

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[3] The parties do not dispute that Tigator and Bayou Kritter operated almost exclusively in interstate commerce. Although the tax periods at issue in the instant case involved the years 1996 through 1998, it is interesting to note that it was established in **Tigator, Inc. v. Police Jury of West Baton Rouge Parish**, 94-1771 (La. App. 1 Cir. 5/5/95), 657 So.2d 221, writs denied, 95-2126, 95-2172 (La. 11/17/95), 663 So.2d 712, that for the years 1990 through 1992 Bayou Kritter had 100% interstate hauling business and Tigator had between 99.80% and 99.89% interstate hauling business; only between 0.11% and 0.20% of Tigator's business was intrastate. Because the actual sales tax obligation of S&W for sales taxes charged to Tigator and Bayou Kritter was not an issue in the instant lawsuit, no similar testimony was received regarding the percentage of these companies' interstate hauling business.

[4] Prior to that time, S&W collected a total of 8% sales tax from Tigator and Bayou Kritter (4% for the State of Louisiana and 4% for West Baton Rouge Parish). After that time, S&W began invoicing Tigator and Bayou Kritter for sales tax, which amounted to only 4% of invoice totals. S&W continued to invoice other customers the full 8% in sales tax.

[5] Mr. Ortego testified they were unable to make the computer software S&W used for invoicing customers calculate different rates on different items within the invoice; i.e., only one tax rate could be applied to the entire invoice. Thus, S&W could not print an invoice that taxed parts at 0% and labor at 8%.

[6] The three corporations had an agreement that at some later time the exact figures would be determined and any necessary payment or refund would be made between the companies. Nevertheless, sales tax returns in evidence showed 4% sales tax on the gross amount of labor charges was remitted to both the parish and the state.

one-half was for West Baton Rouge Parish. S&W contends its intent was not to collect sales tax on the sale to Tigator and Bayou Kritter of tangible items (i.e., parts for their eighteen-wheelers).[7]

In November and December of 1998, West Baton Rouge Parish Council Revenue Agent, Kimberly A. Deaton, conducted a sales and use tax audit of S&W's records. West Baton Rouge Parish took the position that Tigator and Bayou Kritter were not entitled to the La. R.S. 47:306.1 "exemption" on parts used in repairs made by S&W.[8] Consequently, the audit by Ms. Deaton resulted in a finding that S&W had remitted insufficient sales tax on sales made to Tigator and Bayou Kritter. WBRP further concluded that since a total of 4% sales tax had been collected on invoices from S&W to Tigator and Bayou Kritter, *all* of these tax funds should have been remitted to the parish, as the parish maintained that 4% sales tax was due on the entirety of every S&W invoice. S&W contends one-half of all sales tax collected was collected to pay state sales tax.

A judgment was obtained against S&W for the full amount of the sales tax deficiency claimed by WBRP; that judgment was not appealed and has become final. Thereafter, the tax collector of WBRP filed suit against Mr. Albert, under La. R.S. 33:2845.1, seeking to have him found personally liable for failure to remit all sales tax owed by S&W to WBRP. The trial court rendered judgment in favor of the parish, and Mr. Albert has appealed. Mr. Albert makes the following assignments of error:

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[7] There was no dispute among the parties that the percentage of sales tax collected was not stated on the invoices at issue; a dollar amount of tax charged was stated only, and this tax amounted to 4% of the invoice total.

[8] Although the parish tax collector, J. Roger Bergeron, conceded that if the parts had been sold separately, by a parts retailer for example, no sales tax should have been collected, Mr. Bergeron took the position that once the parts were incorporated into a repair service, the overall object of the transaction was the repair service and that service constituted the classification under which the entire transaction should be evaluated for sales tax purposes. Since the sale of services is not subject to the provisions of La. R.S. 47:306.1, the statute does not excuse the payment of sales tax on services. See **International Paper Company v. East Feliciana Parish School Board**, 2002-0648 (La. App. 1 Cir. 3/28/03), 850 So.2d 717, writ denied, 2003-1190 (La. 6/20/03), 847 So.2d 1235, relative to resolution of this issue in favor of the taxing authority.

1. The Trial Judge erred in allowing evidence of prior assessments and a prior judgment against S&W Services, Inc.

2. The Trial Judge erred in denying the motion for directed verdict at the termination of Plaintiff's case.

3. The Trial Judge erred in not requiring a determination of the amount of taxes collected.

4. The Trial Judge erred in determining that the Defendant "willfully" failed to remit taxes.

5. The Trial Judge erred in assessing the liability for the subject sales taxes, etc. against the Defendant.

LAW AND ANALYSIS

Whether La. R.S. 47:306.1 actually provided an exemption to Tigator or Bayou Kritter is not directly pertinent to whether Mr. Albert, as a corporate officer, became liable for the payment of S&W's tax debt. The extent of S&W's tax debt was litigated in a prior suit, resulting in a judgment in favor of the parish. The judgment against S&W has become res judicata and establishes that a certain and specified amount of sales tax was due WBRP by S&W for the pertinent time period. Therefore, the only consideration in this appeal is whether the trial court properly applied La. R.S. 33:2845.1, which provided as follows: [9]

> A. Notwithstanding any other provision of law to the contrary, ***if any corporation fails to file returns or to remit sales and use taxes required to be filed and remitted*** under any law or under any ordinance of a political subdivision in a parish which has a single sales and use tax collector for all political subdivisions in the parish, the single tax collector of such ***political subdivision is authorized***, as an alternative means of enforcing collection, ***to hold those officers or directors who have direct control or supervision of such taxes*** or who are charged with the responsibility of filing such returns and remitting such taxes and who willfully fail to remit or account for such taxes collected, ***personally liable for the total amount of such taxes collected***, and not accounted for or not remitted, together with any interest, penalties, and fees accruing thereon. Collection of the total amount due may be made from any one or any combination of such officers or directors ***who willfully fail to remit*** or account for such taxes withheld or collected.

[9] Pursuant to 2003 La. Acts, No. 551 § 1, effective under § 5 to all tax which becomes due on and after July 1, 2003, La. R.S. 33:2845.1 was repealed and re-enacted in substantially the same form in La. R.S. 47:337.46.

> B. A corporation by resolution of the board of directors may designate an officer or director having direct control or supervision of such taxes or charged with the responsibility of filing such returns and remitting such taxes, and such resolution shall be filed with the secretary of state. [Emphasis supplied.]

Since the liability of the corporate officer depends on the liability of the corporation, among other factors, the tax liability of the corporation must first be established, in a suit based on La. R.S. 33:2845.1. The plaintiff/tax collector, in the instant case, did in fact establish the tax liability of S&W by introducing the WBRP sales tax assessments and the judgment rendered thereon. These documents were relevant and properly admitted.[10]

All parties agree that in order to satisfy La. R.S. 33:2845.1, it must also be established that the corporation actually collected the taxes at issue, *and* that there was a "willful" failure to remit same.[11] The trial court found sufficient evidence presented through the testimony of Mr. Bergeron, the WBRP tax collector, Ms. Deaton, the WBRP revenue agent who audited S&W's records, and Ordrie Ortego, the S&W business advisor, that the taxes in question had been collected by S&W and were willfully diverted from payment of the WBRP sales tax assessment by the issuance of a refund by S&W to Tigator.

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[10] In fact, counsel for defendant/appellant stated to the trial court that no one was "contesting the liability of S&W or the judgment." Defendant/appellant's contention is more accurately that the judgment against S&W does not automatically amount to personal liability of the corporate officer, but rather, collection of the tax and willful failure to remit same must be proven as well.

[11] In brief to this court, plaintiff/appellee listed the elements required to be established by La. R.S. 33:2845.1 as follows: (1) S&W was a corporation; (2) WBRP through its Sales and Use Tax Department is the single sales and use tax collector for all political subdivisions of WBRP; (3) S&W failed to remit sales/use taxes required to be remitted under the ordinances of WBRP; (4) Mr. Albert was an officer or director of S&W; (5) Mr. Albert had direct control or supervision of S&W's taxes or had the responsibility of filing tax returns and remitting taxes; (6) S&W collected from its customers the sales/use taxes at issue; and (7) the failure to remit these taxes was willful. Of these factors, whether the taxes were collected and whether there was a willful failure to remit are the only issues seriously argued in this appeal.

In reviewing a trial court judgment, the appellate courts of the State of Louisiana are authorized by the constitution to review both law and facts. La. Const. art. V. §10(B). An appellate court may not set aside a trial court's finding of fact in the absence of "manifest error" or unless it is "clearly wrong." **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989). In applying this test, a reviewing court must do more that simply review the record for some evidence that supports or controverts the trial court's finding. **Mart v. Hill**, 505 So.2d 1120, 1127 (La. 1987). Furthermore, to reverse a factual determination, the appellate court must find that a reasonable factual basis for the finding of the trial court does not exist in the record and that the record establishes that the finding is clearly wrong or manifestly erroneous. **Mart v. Hill**, 505 So.2d 1120, 1127 (La. 1987).

Reasonable inferences of fact should not be disturbed upon review where conflict exists in the testimony. **Rosell v. ESCO**, 549 So.2d 840 (La. 1989); **Arceneaux v. Domingue**, 365 So.2d 1330, 1333 (La. 1978).

The trial court specifically stated in reasons for judgment:

> I do believe as a matter of fact that there was tax that was collected by S&W and was failed to be remitted willfully by Mr. Albert.
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> * * *
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> ...Obviously there was an amount that was collected or there would not have been a remittance back to Tigator's, if it hadn't been collected.

The record reflects that on July 15, 1999, after completing the audit of S&W's records, WBRP Revenue Agent, Kimberly Deaton, and WBRP Revenue Director, J. Roger Bergeron, met with Mr. Albert, along with their respective attorneys. At that time, the audit results were disclosed to Mr. Albert. He was informed by the WBRP officials that it was their conclusion that $67,369.09 in sales tax had been collected by S&W, which had not been remitted to the parish. On that same day, S&W issued a check in the

amount of $67,369.09 to Tigator, signed by Mr. Albert, with the notation, "For Refund Sales Tax."

The defendant corporate officer did not favor the trial court with his testimony or other evidence of his state of mind. Kimberly Deaton's testimony, relative to the exit conference conducted with Mr. Albert, and her denial of having informed Mr. Albert he could refund the taxes to Tigator, was available to the court. Based on the ruling of the trial court in favor of the parish, it can be concluded that he evaluated the credibility and accepted the testimony of Ms. Deaton on these points. See **Theriot v. Allstate Ins. Co.**, 625 So.2d 1337, 1340 (La. 1993); **Tauzin v. Claitor**, 417 So.2d 1304, 1309 (La. App. 1 Cir.), writ denied, 422 So.2d 423 (La. 1982).

Moreover, the trial court could have adjudged "willfulness." Willfulness is a state of mind that a trial court must discern and determine from the documents and testimony, including the credibility of the witnesses. Willfulness is, of course, on the opposite end of the spectrum from accidental or negligent action. It may be said to be beyond intentional action in that the willful actor desires the consequences. "Willfulness" in this case is an intentional act with the desired consequence of avoiding remittance to the taxing authority. It is reasonable to so find by virtue of the issuance of the check to Tigator designated as a "refund" of "sales tax," signed by Mr. Albert, in the amount of the outstanding tax due WBRP, as determined by the audit.

Thus, we can conclude there is supporting evidence for the trial court's finding of fact and application of the law.

The trial court was certainly mindful of the defendant's argument that some of these issues arose because of the inability of S&W to program its computer to invoice different rates on different items. The response of S&W's management to that inability was an arbitrary assignment of

percentage of goods and services. Any resulting problem is of their own making and one for which they have to assume responsibility. The trial court after hearing all the testimony and considering the evidence, accepted the audit conducted by the taxing authority.

After a thorough review of the record presented on appeal, we conclude that there is a reasonable factual basis for the finding of the trial court and that the record establishes that the finding is not clearly wrong or manifestly erroneous. Therefore, we adhere to our standard of review and affirm the decision of the trial court.

CONCLUSION

For the reasons assigned herein, the judgment of the trial court is affirmed; all costs of this appeal are to be borne by appellant, Preston J. Albert, Jr.

AFFIRMED.

STATE OF LOUISIANA

COURT OF APPEAL

FIRST CIRCUIT

2002 CA 1955

J. ROGER BERGERON, IN HIS OFFICAL CAPACITY AS DIRECTOR OF THE SALES TAX AND USE DEPARTMENT FOR THE PARISH OF WEST BATON ROUGE

VERSUS

PRESTON W. ALBERT, JR.

McCLENDON, Judge, dissents.

In reviewing this case, we must begin with the well-settled premise that taxing statutes must be strictly construed against the taxing authority. **Goudchaux v. Maison Blanche, Inc. v. Broussard**, 590 So.2d 1159, 1161 (La.1991). Therefore, to prevail herein under LSA-R.S. 33:2845.1A, the plaintiff had the burden of proving by a preponderance of the evidence two essential elements of its cause of action. That is, it had to show by a preponderance of the evidence that the taxes were "collected" and the defendant "willfully" failed to remit the taxes. I believe the plaintiff failed to prove the willful element of its cause of action. On that basis, I respectfully dissent without reaching the issue of whether the plaintiff proved that the taxes were actually collected.

By letters dated November 6, 1996, the Louisiana Department of Revenue (hereinafter the "Department") authorized Tigator, Inc. and Bayou

Kritter, Inc., Louisiana corporations[1] domiciled in West Baton Rouge Parish, to remit state sales and use taxes on purchases of tangible personal property directly to the Department pursuant to LSA-R.S. 47:306.1. The effective date of the letters was July 3, 1996. Tigator and Bayou Kritter provided copies of these letters to S&W Services, Inc., a Louisiana corporation with facilities in West Baton Rouge Parish, and requested that S&W not invoice them for sales taxes on tangible personal property used in servicing and repairing their 18-wheel tractor-trailer rigs. Prior to the effective date of the Department's letters, S&W had collected an 8% sales tax on all transactions with Tigator and Bayou Kritter, 4% of which was collected for the State of Louisiana and 4% for West Baton Rouge Parish. In an effort to comply with the letters from the Department, in September of 1996, S&W began collecting a 4% sales tax on all parts and labor it supplied to Tigator and Bayou Kritter, and did so throughout the remainder of the audit periods. With respect to its other customers, it continued to collect an 8% sales tax, 4% for the State of Louisiana and 4% for West Baton Rouge Parish.

The Sales and Use Tax Department for the Parish of West Baton Rouge conducted audits of S&W for the periods of January of 1996 through September of 1998 and October of 1998 through July of 1999. As a result of these audits, it determined that S&W owed sales tax on the parts used in servicing and repairing tractor-trailers for Tigator and Bayou Kritter and issued assessments to S&W in October of 1999 and November of 1999. S&W did not appeal the assessments.

On August 8, 2000, J. Roger Bergeron, in his capacity as Director of

[1] The majority refers to Tigator, Inc. and Bayou Kritter, Inc. as companies, and refers to S&W, Inc. as a repair service. However, at all times pertinent to this litigation, these three entities were valid Louisiana corporations.

the Sales and Use Tax Department for the Parish of West Baton Rouge (hereinafter the "Parish") filed suit against S&W for its tax debt and obtained a judgment in the sum of $91,723.86, plus penalties, interest and attorney's fees. S&W did not appeal that judgment. Subsequently, a judgment debtor examination revealed that S&W, which ceased operations in July of 1999, had no assets.

Pursuant to LSA-R.S. 33:2845.1A, the Parish filed suit against Preston W. Albert, Jr., who at all pertinent times was president and chief executive officer of S&W, seeking to recover the taxes owed by S&W from Mr. Albert. After hearing the matter, the trial court rendered judgment in favor of the Parish and against Mr. Albert in the sum of $91,723.86, plus interest, penalties and attorney's fees. Mr. Albert appealed, asserting that the trial court erred in imposing liability on him as the Parish failed to carry its burden of proving that S&W collected and willfully failed to remit the taxes at issue.

In reviewing a trial court judgment, the appellate courts of the State of Louisiana are granted by the constitution the authority to review both law and facts. La. Const. art. V. §10(B). An appellate court may not set aside a trial court's finding of fact in the absence of "manifest error" or unless it is "clearly wrong." **Rosell v. ESCO**, 549 So.2d 840, 844 (La. 1989). However, where documents or objective evidence so contradict the witness's story, or the story itself is so internally inconsistent or implausible on its face, that a reasonable factfinder would not credit the witness's story, the court of appeal may find manifest error or clear wrongness even in a finding purportedly based upon a credibility determination. **Rosell v. ESCO**, 549 So.2d 840, 844-45 (La. 1989).

At trial, Kimberly Deaton, who conducted the audits for the Parish, testified that, during the audit periods, S&W charged Tigator and Bayou Kritter a 4% sales tax on all parts and labor, but its invoices did not indicate whether the tax was collected for the State of Louisiana or West Baton Rouge Parish. However, S&W's general leger showed that S&W remitted sales tax to both the State of Louisiana and to West Baton Rouge Parish. Ms. Deaton testified that she concluded that the 4% tax was collected entirely for West Baton Rouge Parish because, during her initial conversation with Mr. Albert at the beginning of the audits, Mr. Albert showed her the letters from the Department and said he was proceeding under the requirements of LSA-R.S. 47:306.1. Since the letters were from the State of Louisiana, Ms. Deaton assumed S&W was collecting no tax for the State of Louisiana and the entire 4% sales tax was collected for West Baton Rouge Parish. However, Ms. Deaton admitted that Mr. Albert never told her that S&W was charging the entire 4% sales tax on behalf of West Baton Rouge Parish.

At trial, J. Roger Bergeron, the Director of the Sales and Use Tax Department for the Parish of West Baton Rouge and Ms. Deaton's immediate supervisor, explained the Parish's position as follows, "[F]our percent tax was collected on transactions throughout the audit period, which we believe to be West Baton Rouge Parish tax, and the tax was not fully remitted on transactions we believe to be fully taxable." He testified further that the Parish relies solely on Ms. Deaton's testimony concerning Mr. Albert's comments at her initial visit to S&W in asserting that the entire sum was collected on behalf of West Baton Rouge Parish.

Mr. Odrie Ortego, a retired accountant, testified on behalf of the defendant. Mr. Ortego worked, at all pertinent times, for S&W as a

consultant, advising the company about financial, business and tax matters. Mr. Ortego testified that the application of LSA-R.S. 47:306.1, as authorized by the Department's letters dated November 6, 1996, required S&W to collect and remit taxes only on the labor costs that it billed to Tigator and Bayou Kritter. However, due to its accounting system, S&W could assess only one tax rate to each customer for all services and materials it provided to that customer. Therefore, it could not assess 8% on labor and no tax on parts as required by LSA-R.S. 47:306.1. To manage this inadequacy in its accounting system, S&W reviewed its transactions with Tigator and Bayou Kritter and determined that, of the services and repairs it provided to Tigator and Bayou Kritter, approximately one-half of the costs were attributable to parts and one-half were attributable to labor. On this basis, S&W estimated the tax liability of Tigator and Bayou Kritter was 8% of 50% of its costs and collected the estimated sums by assessing a 4% tax on all parts and labor, 2% for West Baton Rouge Parish and 2% for the State of Louisiana. Although 4% was charged on the entire amount, S&W only remitted to the State of Louisiana and West Baton Rouge Parish the tax due on the labor element of Tigator's and Bayou Kritter's invoices. It paid no taxes to either the State of Louisiana or to West Baton Rouge Parish on the parts used to service and repair the tractor-trailers. S&W, Tigator and Bayou Kritter agreed that, on a monthly basis, S&W would compute the actual tax liability and refund any overcharged sums; however, S&W had not refunded any sums prior to the audit. Upon completion of the Parish's audits in July of 1999, S&W immediately refunded the sums collected in excess of the taxes due on the labor expenses.

The Parish asserts that the act of refunding the taxes, rather than remitting them to the Parish, alone is sufficient to prove the willful failure to

remit. I disagree. S&W simply developed and executed a plan to act within the dictates of the letters authored by the Department in November of 1996. The delay in refunding funds until the auditor for the Parish advised S&W that it continued to hold moneys paid in excess of the tax liability for labor costs does not constitute a willful failure to remit or account for taxes collected.[2] Furthermore, even if S&W's interpretation of the Department's letters was erroneous as asserted by the Parish, such is also insufficient to constitute the willful act of not remitting collected taxes. This record is void of any evidence that Mr. Albert or any employee of S&W willfully failed to remit or account for taxes collected. Therefore, the trial court manifestly erred in concluding that the Parish proved that any failure to remit taxes was willful, an essential element of the Parish's case.

Undisputedly, the review of an appellate court is limited to manifest or clear error. **Stobart v. State**, 617 So.2d 880, 882 (La.1993). However, an appellate court is not required to follow blindly the factual determinations of a trial court without discerning whether the court's discretion in evaluating facts and credibility has been abused. The great latitude and discretion afforded the trier of fact must always be buttressed by sound judgment. Herein, the factual determinations of the trial court are not supported by evidence of record. Therefore, I would reverse the judgment of the trial court.[3]

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[2] It is noteworthy that there is no evidence in the record of any official notification to S&W by the Parish of additional tax liability on behalf of S&W prior to S&W's act of refunding the excess taxes collected to Tigator and Bayou Kritter.

[3] I do not reach the issue of whether the taxes were ever collected having found that the willful element of the Parish's case was not proven.