

below, we affirm.

{¶2} According to submitted interrogatories, Peters was the president and sole shareholder of Skiles Truck from 1964 to 2002. Jill Heindl, appellant's daughter and employee of Skiles Truck from 1985 to 2002, was responsible for Skiles Truck's fiscal responsibilities and was charged with filing its necessary tax documentation. Heindl also had the "authority to sign check[s] with her name." Peters, however, while having the same "authority" to sign checks, "did not issue checks."

{¶3} Beginning in April of 1999, Skiles Truck had numerous withholding tax assessments issued against it by the Ohio Tax Commissioner. Peters did not appeal from the assessments against Skiles Truck. After the assessments went unpaid, the Ohio Tax Commissioner's entry making the assessments final was filed with the Preble County Clerk of Court. The Clerk of Court subsequently entered judgment against Skiles Truck.

{¶4} On January 11, 2010, the Department of Taxation filed a complaint against Peters and Heindl seeking to hold them personally liable, both jointly and severally, on the judgment entered against Skiles Truck for its unpaid withholding tax. After Peters and Heindl filed their joint answer, the Department of Taxation moved for summary judgment.

{¶5} On September 28, 2010, the trial court issued a decision granting the Department of Taxation's motion for summary judgment finding Peters personally liable on the judgment. In so holding, the trial court found "Peters own[ed] 100% of the company, was president of the company and clearly was [Heindl's] supervisor. As such, Peters clearly had authority to exercise control over relevant tax duties."

{¶6} Peters now appeals from the trial court's decision granting summary judgment in favor of the Department of Taxation, raising one assignment of error for review.

{¶7} "THE TRIAL COURT ERRED AS A MATTER OF LAW GRANTING APPELLEE SUMMARY JUDGMENT."

{¶8} In his single assignment of error, Peters argues that the trial court erred by granting summary judgment to the Department of Taxation by finding him personally liable on the judgment against Skiles Truck for its unpaid withholding taxes because "he was not involved in the day-to-day operations of the company and had retired." This argument lacks merit.

{¶9} Summary judgment is a procedural device used to terminate litigation when there are no issues in a case requiring a formal trial. *Forste v. Oakview Const., Inc.*, Warren App. No. CA2009-05-054, 2009-Ohio-5516, ¶7. A trial court may grant summary judgment only when: (1) there is no genuine issue of any material fact; (2) the moving party is entitled to judgment as a matter of law; and (3) the evidence submitted can only lead reasonable minds to a conclusion which is adverse to the nonmoving party. See Civ.R. 56(C); *Harless v. Willis Day Warehousing Co.* (1978), 54 Ohio St.2d 64, 66. The party moving for summary judgment bears the initial burden of demonstrating no genuine issue of material fact exists. *Dresher v. Burt*, 75 Ohio St.3d 280, 292-293, 1996-Ohio-107. Once this burden is met, the nonmoving party must then present evidence to show that there is some issue of material fact yet remaining for the trial court to resolve. *Smedley v. Discount Drug Mart, Inc.*, Fayette App. No. CA2010-05-010, 2010-Ohio-5665, ¶11. In determining whether a genuine issue of material fact exists, the evidence must be construed in the nonmoving party's favor. *Walters v. Middletown Properties Co.*, Butler App. No. CA2001-10-249, 2002-Ohio-3730, ¶10.

{¶10} Pursuant to R.C. 5747.07(G), which the Ohio Supreme Court has found clear and unambiguous, "[a]n employee of a corporation * * * having control or supervision of or charged with the responsibility of filing the report and making payment, or an officer, member, manager, or trustee of a corporation * * * who is responsible for the execution of the corporation's * * * fiscal responsibilities, shall be personally liable for failure to file the report or pay the tax due as required by this section." See *Soltész v. Tracy*, 75 Ohio St.3d 477,

1996-Ohio-150, syllabus; *Cortese v. Limbach* (Sept. 14, 1993), Trumbull App. No. 92-T-4812, 1993 WL 345431, at *1.

{¶11} Few cases have dealt with this provision, and therefore, we find it necessary and appropriate to draw upon case law developed under R.C. 5739.33, a similar provision regarding sales tax. See *Valentine v. Tracy* (Mar. 7, 1997), Ohio Bd.Tax.App. No. 96-P-305, 1997 WL 112211, at *1; see, also, *Lilienthal v. Tracy* (Mar. 29, 1996), Ohio Bd.Tax.App. Nos. 95-A-241, 95-A-545, 1996 WL 154399, at *1.

{¶12} R.C. 5739.33 states, in pertinent part, "[i]f any corporation * * * required to file returns and to remit tax due to the state under this chapter * * * fails for any reason to make the filing or payment, any of its employees having control or supervision of or charged with the responsibility of filing returns and making payments, or any of its officers, members, managers, or trustees who are responsible for the corporation's * * * fiscal responsibilities, shall be personally liable for the failure."

{¶13} By enacting R.C. 5739.33, the General Assembly intended to "hold those officers or employees who were in charge of the operations of a defaulting corporation personally liable for unpaid sales tax if such persons filed returns or paid taxes, or controlled or supervised others who performed those tasks, or had responsibility for such tasks." *Nimon v. Zaino*, Lorain App. No. 01CA007918, 2002-Ohio-822, 2002 WL 276775, at *2. In turn, "[o]nce the assessment against the corporation becomes conclusive by the failure to present objections thereto the officer is bound by the oscillancy of his corporation." *Rowland v. Collins* (1976), 48 Ohio St.2d 311, 313.

{¶14} After a thorough review of the record, and while it may be true that he did not engage in the day-to-day affairs of Skiles Truck, we find the facts indicate Peters, as its president, owner, and sole shareholder for over 35 years, clearly had the authority to exercise control over the corporation's fiscal responsibilities. In fact, as the answers to his

interrogatories explicitly state, although Peters "did not issue checks," he had the "authority" to do so.

{¶15} As noted by the Ohio Supreme Court, a responsible officer or employee cannot "escape liability by delegating those duties to others." *Spithogianis v. Limbach* (1990), 53 Ohio St.3d 55, 57; *McGlothin v. Limbach* (1991), 57 Ohio St.3d 72, 73. In turn, while there may certainly be instances where a question of fact exists regarding one's personal liability for failing to adhere to the requirements of R.C. 5747.07(G) making summary judgment inappropriate, such is not the case here. Therefore, because Peters, as the president, owner, and sole shareholder exercised control over Skiles Truck's fiscal responsibilities, we find no error in the trial court's decision granting summary judgment to the Department of Taxation. See *Brantman v. Tracy* (Apr. 28, 2000), Ohio Bd.Tax.App. No. 98-M-719, 2000 WL 529459; see, also, *Nusseibeh v. Zaino*, 98 Ohio St.3d 292, 2003-Ohio-855, ¶14; *Skuratwicz v. Tracy*, 80 Ohio St.3d 52, 1997-Ohio-358. Accordingly, Peters' sole assignment of error is overruled.

{¶16} Judgment affirmed.

POWELL, P.J., and PIPER, J., concur.