

Arnold W. VINICK, Plaintiff,  
Appellant,

v.

UNITED STATES, Defendant, Appellee.

No. 98-2143.

United States Court of Appeals,  
First Circuit.

Heard Sept. 8, 1999.

Decided March 8, 2000.

Corporation's treasurer filed claim for refund of taxed paid pursuant to penalty assessment for failure to pay taxes withheld from employees' wages. The United States District Court for the District of Massachusetts, Mark L. Wolf, J., 1996 WL 208471, granted summary judgment to government. Treasurer appealed. The Court of Appeals, 110 F.3d 168, affirmed in part and reversed in part. On remand, following bench trial, the District Court entered judgment for government. Treasurer appealed. The Court of Appeals, Stahl, Circuit Judge, held that treasurer was not a "responsible person" who was liable for failure to pay taxes.

Reversed and remanded with instructions.

Lynch, Circuit Judge, filed dissenting opinion.

### 1. Internal Revenue $\S$ 5204, 5219.25

Liability for failure to pay taxes that have been withheld from employees' wages falls upon those persons who satisfy both prongs of a two-part inquiry: first, the person must be responsible for collecting, accounting for, and paying over the taxes; second, if, and only if, the person is deemed responsible, he is liable if he acted willfully within the meaning of the statute. 26 U.S.C.A.  $\S$  6672(a).

### 2. Federal Courts $\S$ 853

Under "clear error" standard of review of factual findings, Court of Appeals accepts the district court's findings of fact unless Court of Appeals is left with the definite and firm conviction that a mistake has been committed.

### 3. Federal Courts $\S$ 754.1

Court of Appeals usually defers to a trial court's resolution of mixed questions of law and fact.

### 4. Federal Courts $\S$ 754.1

When a trial court premises its ultimate finding on an erroneous interpretation of the standard to be applied, Court of Appeals does not use clear-error review; instead, Court of Appeals treats the trial court's conclusion as a question of law.

### 5. Internal Revenue $\S$ 5204

For purpose of determining liability for failure to pay taxes that have been withheld from employees' wages, a "responsible person" is anyone within a company who has a duty to collect, account for, or pay the withheld taxes. 26 U.S.C.A.  $\S$  6672(a).

See publication Words and Phrases for other judicial constructions and definitions.

### 6. Internal Revenue $\S$ 5205, 5206

For purpose of determining liability for failure to pay taxes that have been withheld from employees' wages, the inquiry focuses on whether the individual (1) is an officer or member of the board of directors, (2) owns shares or possesses an entrepreneurial stake in the company, (3) is active in the management of day-to-day affairs of the company, (4) has the ability to hire and fire employees, (5) makes decisions regarding which, when and in what order outstanding debts or taxes will be paid, (6) exercises control over daily bank accounts and disbursement records, and (7) has check-signing authority. 26 U.S.C.A.  $\S$  6672(a).