

# Case Study 1

# GREEN & SKLARZ LLC

Attorneys at Law  
[www.gs-lawfirm.com](http://www.gs-lawfirm.com)

**Amanda Evans, EA**  
Phone: (203) 285-8545 9  
Fax: (203) 286-4004  
[aevans@gs-lawfirm.com](mailto:aevans@gs-lawfirm.com)

1 Audubon Street, 3<sup>rd</sup> Floor  
New Haven, CT 06511

August 4, 2021

Internal Revenue Service  
Attn: Revenue officer  
290 Broadway – Foley Square  
New York, NY 10007

**Re: TAXPAYER AND WIFE**

Dear Mr. RO:

This office represents the above-referenced taxpayers, TAXPAYER AND WIFE. We are in receipt of the 2018 account transcript you sent via facsimile transmission on August 2, 2020.

We respectfully request removal of the failure to file penalty, as it was improperly imposed by the Internal Revenue Service (“IRS”). The taxpayers, via USPS mail, filed an extension of time to file the return until October 15, 2019 and included full payment for their 2018 taxes with the request.<sup>1</sup>

Enclosed herewith is a copy of the check dated April 15, 2019 and processed by the IRS on May 3, 2019 for their 2018 taxes (this represents the amount paid with the extension to file from Schedule 5 / Line 71 from their Form 1040). Based on the account transcript, it appears the IRS might have lost the extension request when they processed the payment<sup>2</sup>. Between the check payment for \$1,990,000.00 and the credit from a prior year that the taxpayers applied to their 2018 return, there was no tax due.

Under IRC Section 6651(b), the failure to file penalty is imposed on the net amount due. Pursuant to IRC Section 6651(b), “the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed on the return.” Here, the IRS received the check that was mailed on April 15, 2019 and processed on

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<sup>1</sup> Pursuant to Line 19 of their 2018 Form 1040, the taxpayers overpaid their 2018 taxes by \$16,258 and requested the overpayment be applied to their 2019 Form 1040 as an estimated tax payment.

<sup>2</sup> For reasons unknown to the taxpayers, the account transcript is coded with transaction code 460 / Extension of time to file tax return ext. date 4-15-2019, rather than 10-15-2019.

May 3, 2019 and therefore there was no tax due on the return. Accordingly, there should be no imposition of the failure to file penalty.

If you need anything else, please let me know.

Very truly yours,

Amanda Evans

**Internal Revenue Service**  
210 EAST POST ROAD  
WHITE PLAINS, NY 10601

**Department of the Treasury**

Taxpayer and Wife  
Address  
City, State Zip

**Taxpayer Identification Number:**

XXX-XX-0000

**Kind of Tax:**

1040

**Tax Period(s) Ended:**

12/31/2018

**Person to Contact:**

Revenue Officer

**Employee Identification Number:**

1000XXXXXX

**Telephone Number:**

(212)xxx-xxxx

**Date:**

08/05/2021

We regret to tell you that the information you provided on 08/05/2021 does not establish reasonable cause for adjusting the penalty shown above. This is your official notice that your request for penalty adjustment is denied.

The following information will help you if you want to pursue your request for penalty abatement or if you want to appeal our decision.

**APPEALS PROCEDURES**

If you want to receive further consideration by an Appeals Officer, file a brief written statement of the disputed issues with the person named above. Include any additional information in your statement that you want the Appeals Officer to consider. If you do not provide additional information now, you can still receive consideration by an Appeals Officer. However, providing additional information now may expedite processing. A written statement is required on all appeals to change a penalty that has been assessed, as required by Treasury Regulations Section 601.106(a)(1)(ii)(c). It should include:

1. A statement that you want to appeal the findings.
2. Your name and address.
3. A statement of facts supporting your position in any disputed issues.

The statement of facts, under 3 above, should be detailed and complete, including specific dates, names, amounts, locations, etc. It must declare that the statement of facts is true under penalties of perjury. You may do this by adding to the statement the following signed declaration:

"Under penalties of perjury, I declare that the facts presented in my statement of disputed issues, which are set out in the accompanying statement of facts, schedules, and other attached statements are, to the best of my knowledge and belief, true, correct, and complete."

We must receive the statement within 15 days from the date on this letter. Direct your response to the person named above at the return address on this letter. Please include your phone number in your reply.

Even though you may be requesting Appeals consideration, we will first review your additional information to determine whether the penalty should be removed or reduced. If your appeal cannot be immediately resolved with the additional information, we will forward your written statement to Appeals.

## REPRESENTATION:

An attorney, certified public accountant, or person enrolled to practice before the Internal Revenue Service may represent you. If you want someone to represent you but have not provided us with a current authorization for this, attach a completed Form 2848, Power of Attorney and Declaration of Representative, or Form 8821, Tax Information Authorization (or similar authorization), to your written statement.

Forms, instructions, and Treasury Department Circular 230, Regulations Governing the Practice of Attorneys, Certified Public Accountants, and Enrolled Agents Before the Internal Revenue Service, are available from any Internal Revenue Service office.

## OTHER INFORMATION:

If tax and interest are also due on your account, we may continue collection action even if you appeal the penalty. If you decide to appeal the penalty, you may pay the amount you owe on your account now to avoid additional interest and penalties on the tax amount and additional interest on the penalty amount. If the Appeals Officer determines that you are not required to pay the penalty, we will adjust your account and issue a refund for any amount due you.

If you do not appeal, you may file a claim for refund after you pay the penalty. If you want to take your case to court immediately, you should request in writing, when you file your claim for refund, that you want it to be immediately rejected. We will then issue you a notice of disallowance. You will have two years from the date of the notice of disallowance to bring suit in the United States District Court having jurisdiction or in the United States Claims Court.

If you have questions about this letter, you may call the contact person named above at the telephone number shown.

Sincerely,

REVENUE OFFICER

Enclosure:  
Self-addressed reply envelope

# GREEN & SKLARZ LLC

Attorneys at Law  
[www.gs-lawfirm.com](http://www.gs-lawfirm.com)

**Amanda Evans, EA**  
Phone: (203) 285-8545  
Fax: (203) 286-4004  
[aevans@gs-lawfirm.com](mailto:aevans@gs-lawfirm.com)

1 Audubon Street, 3<sup>rd</sup> Floor  
New Haven, CT 06511

August 19, 2021

**Via Fax: (855) 872-7229**

Internal Revenue Service  
Attn: Revenue Officer  
290 Broadway – Foley Square  
New York, NY 10007

**Re: Taxpayer & Wife  
Street Address  
City, State Zip**

Dear Mr. RO:

This office represents the above-referenced taxpayers, Taxpayer & Wife. We are in receipt your official notice dated August 5, 2021 indicating that the taxpayers' request for penalty adjustment was denied.

**A Statement Requesting An Appeal of the Findings**

We respectfully request an appeal to the IRS' denial of the removal of the failure to file penalty for form 1040, tax year 2018 and submit this written statement, pursuant to Treasury Regulations Section 601.106(a)(1)(ii)(c).

**Statement of Facts and Disputed Issues**

The failure to file penalty was improperly imposed by the Internal Revenue Service ("IRS"). The taxpayers, via USPS mail, filed an extension of time to file their 2018 Form 1040 return until October 15, 2019 and included full payment for their taxes with the request.<sup>1</sup>

Enclosed herewith is a copy of the check dated April 15, 2019 and processed by the IRS on May 3, 2019 for their 2018 taxes (this represents the amount paid with the extension to file from Schedule 5 / Line 71 from their Form 1040). Based on the account transcript, it appears the

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<sup>1</sup> Pursuant to Line 19 of their 2018 Form 1040, the taxpayers overpaid their 2018 taxes by \$16,258 and requested the overpayment be applied to their 2019 Form 1040 as an estimated tax payment.

IRS might have lost the extension request when they processed the payment<sup>2</sup>. Between the check payment for \$1,990,000.00 and the credit from a prior year that the taxpayers applied to their 2018 return, there was no tax due.

Under IRC Section 6651(b), the failure to file penalty is imposed on the net amount due. Pursuant to IRC Section 6651(b), “the amount of tax required to be shown on the return shall be reduced by the amount of any part of the tax which is paid on or before the date prescribed for payment of the tax and by the amount of any credit against the tax which may be claimed on the return.” Here, the IRS received the check that was mailed on April 15, 2019 and processed on May 3, 2019 and therefore there was no tax due on the return. Accordingly, there should be no imposition of the failure to file penalty.

The Taxpayers paid the tax timely. Requiring them to pay penalties and interest on those penalties would not support voluntary compliance by taxpayers, as there was clearly no willful intent to disobey the taxing statutes. While the return itself was late-filed, due to the complexity of the return and other issues, the taxpayers ensured the full amount of tax due was timely paid. As the penalty is imposed upon the net amount due, and the net amount was \$0.00, there should be no imposition of penalty.

After your reconsideration of the request herein, please forward this written statement to Appeals. If you need anything else, please let me know. My phone number is 203-285-8545.

Very truly yours,

Amanda Evans

**Declaration of Taxpayer & Wife**

Under penalties of perjury, We declare that the facts presented in my statement of disputed issues, which are set out in the accompanying statement of facts, schedules, and other attached statements are, to the best of my knowledge and belief, true, correct, and complete.

\_\_\_\_\_  
Taxpayer Name  
Date: \_\_\_\_\_

\_\_\_\_\_  
Wife Name  
Date: \_\_\_\_\_

<sup>2</sup> For reasons unknown to the taxpayers, the account transcript is coded with transaction code 460 / Extension of time to file tax return ext. date 4-15-2019, rather than 10-15-2019.



**Department of the Treasury**  
**Internal Revenue Service**  
**Independent Office of Appeals**  
324 25th Street, Suite 6001  
M/S 8500  
Ogden, UT 84401-2344

Date: 9.29.2021

**Person to contact:**  
Name: Appeals Officer  
Employee ID Number: 1000xxxxxx  
Phone: 801-xxx-xxxx  
Fax: 855-xxx-xxxx

TAXPAYER & WIFE  
Street Address  
City, State Zip

**Re:**  
Penalty Appeals  
**Tax periods ended:**  
12/2018  
**Amount of assessed penalties:**  
\$493,435.60  
**IRC sections:**  
6651(a)(1)

Dear Mr. & Mrs. Taxpayer:

I completed my review of your request to adjust the penalties assessed against you. Based on the information submitted, I am pleased to advise you the penalties will be abated (removed) in full. When this action has been completed, you will receive an adjustment notice from the Service Center, which originally assessed the penalty.

If you have any additional questions, please contact the person shown at the top of this letter.

Sincerely,

  
Appeals Team Manager

cc: Eric L Green  
Amanda Evans



# Case Study 2

April 9, 2020

Internal Revenue Service  
Service Center Penalty Appeals Coordinator  
P.O. Box 9941 TPR M/S 6731  
Ogden, UT 84409

**Re: Deceased Taxpayer's Name**

Dear Sir or Madam:

I am the Executor for the above referenced taxpayer's estate. The taxpayer suffered from Alzheimer's disease and Dementia, which was first diagnosed in 2011. The taxpayer passed away in 2019, a copy of the Death Certificate is enclosed as is his Will naming me Executor and a copy of my drivers license. There is no probate as there is no estate to probate.

I am writing regarding the above referenced taxpayer to respectfully request penalty abatement for amounts due for a household employee's wages for the quarterly tax periods 3/2017, 12/2017, 6/2018, 9/2018, 12/2018, 3/2019, 6/2019, and 9/2019.

As I mentioned above, the above referenced taxpayer suffered from Alzheimer's disease and Dementia. In 2013 the taxpayer required 24/7 home care and hired caregivers as household employees. A friend of the taxpayers with no business or financial experience agreed to help the taxpayer as a friend manage his finances. The friend helped him pay bills and hired Paychex, a payroll company, to handle the payroll. Paychex reported and paid the state taxes but for some unknown reason failed to report and pay the federal taxes.

Once it was brought to our attention that Paychex was not filing or paying quarterly and annual payroll tax returns and taxes, we immediately filed missing returns and mailed payments for tax assessments. All taxes as of this moment have been paid, as has the interest. The penalties are the one issue remaining.

Prior to this disease the taxpayer always maintained a good history of compliance and had no intentions on disobeying his tax requirements. He was in no shape to handle his affairs, and the friends who tried to help were clearly unable to properly manage the tax issues.

The taxpayer was in a declining mental state for 8 years until his death, he tried to manage his affairs with help, and that help tried to meet the tax compliance goals by hiring an outside payroll company. At no time did the taxpayer or his help ever attempt to ignore or evade their filing and payment requirements. The requirements were just beyond their complete understanding. All household employees received W-2s and all taxes were paid, as was the interest. The penalties here serve no purpose other than to punish the estate of the deceased, and we are asking for relief from them for reasonable cause given the taxpayer's inability to manage his affairs.

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For all of the above reasons I am respectfully requesting abatement of all penalties and interest associated with late filing and failure to pay taxes due for 2017-2019.

Very truly yours,

Son's Name,  
Executor

Enclosures

OGDEN UT 84201-0038

In reply refer to: xxxxxxxxx  
Dec. 29, 2020 LTR 168C 3  
201712 10 1  
00004799  
BODC: SB

Deceased Father's Name

 City CT 0xxxxx

000472

Taxpayer identification number: xxx-xx-xxxx  
Tax periods: Dec. 31, 2017 Dec. 31, 2018  
Form: 940

Dear Taxpayer:

Thank you for your inquiry dated Apr. 09, 2020.

With the additional information you submitted we were able to remove the penalties from the tax periods listed above. If you have already paid the penalty and have no other taxes owed, we will refund it to you in 4 to 6 weeks.

If you have questions, you can call 800-829-0115.

If you prefer, you can write to the address at the top of the first page of this letter.

When you write, include a copy of this letter, and provide your telephone number and the hours we can reach you in the spaces below.

Telephone number ( ) \_\_\_\_\_ Hours \_\_\_\_\_

Keep a copy of this letter for your records.

Thank you for your cooperation.

# Case Study 3

## Internal Revenue Service

## Department of the Treasury

Date: March 12, 2020

**Number of this Letter:** 1153

**Person to Contact:** Revenue Officer Name

**Employee Number:** 10000789

**IRS Contact Address:** 150 Court Street, New Haven, CT

**IRS Telephone Number:** 203-XXX-XXXX

**Employer Identification Number:** 06-XXXXXXX

**Business Name and Address:** Global Construction, Inc.

Dear Manager Joseph

Our efforts to collect the federal employment or excise taxes due from the business named above have not resulted in full payment of the liability. We therefore propose to assess a penalty against you as a person required to collect, account for, and pay over withhold taxes for the above business.

Under the provisions of Internal Revenue Code section 6672, individuals who were required to collect, account for, and pay over these taxes for the business may be personally liable for a penalty if the business doesn't pay the taxes. These taxes, described in the enclosed Form 2751, consist of employment taxes you withheld (or should have withheld) from the employees' wages (and didn't pay) or excise taxes you collected (or should have collected) from patrons (and didn't pay), and are commonly referred to as "trust fund taxes."

The penalty we propose to assess against you is a personal liability called the Trust Fund Recovery Penalty. It is equal to the unpaid trust fund taxes which the business still owes the government. If you agree with this penalty for each tax period shown, please sign Part 1 of the enclosed Form 2751 and return it to us in the enclosed envelope.

If you don't agree, have additional information to support your case, and wish to try to resolve the matter informally, contact the person named at the top of this letter within ten days from the date of this letter.

You also have the right to appeal or protest this action. To preserve your appeal rights you need to mail us your written appeal within 60 days from the date of this letter (75 days if this letter is addressed to you outside the United States). The instructions below explain how to make the request.

## APPEALS

You may appeal your case to the local Appeals Office. Send your written appeal to the attention of the Person to Contact at the address shown at the top of this letter. The dollar amount of the proposed liability for each specific tax period you are protesting affects the form your appeal should take.

For each period you are protesting, if the proposed penalty amount is:

You should:

\$25,000 or less

Send a letter listing the issues you disagree with and explain why you disagree. (Small Case Request).

More than \$25,000

Submit a formal Written Protest.

One protest will suffice for all the periods listed on the enclosed Form 2751, however if any one of those periods is more than \$25,000, a formal protest must be filed. Include any additional information that you want the Settlement Officer/Appeals Officer to consider. You may still appeal without additional information, but including it at this stage will help us to process your request promptly.

**A SMALL CASE REQUEST** should include:

1. A copy of this letter, or your name, address, social security number, and any information that will help us locate your file;
2. A statement that you want an Appeal's conference;
3. A list of the issues you disagree with and an explanation of why you disagree. Usually, penalty cases like this one involve issues of responsibility and willfulness. Willfulness means that an action was intentional, deliberate or voluntary and not an accident or mistake. Therefore, your statement should include a clear explanation of your duties and responsibilities; and specifically, your duty and authority to collect, account for, and pay the trust fund taxes. Should you disagree with how we calculated the penalty, your statement should identify the dates and amounts of payments that you believe we didn't consider and or/ any computation errors that you believe we made.

Please submit two copies of your Small Case Request.

A formal **WRITTEN PROTEST** **should** include the items below. Pay particular attention to item 6 and the note that follows it.

1. Your name, address, and social security number;
2. A statement that you want a conference;
3. A copy of this letter, or the date and number of this letter;
4. The tax periods involved (see Form 2751);
5. A list of the findings you disagree with;
6. A statement of fact, signed under penalties of perjury, that explains why you disagree and why you believe you shouldn't be charged with the penalty. Include specific dates, names, amounts, and locations which support your position. Usually, penalty cases like this one involve issues of responsibility and willfulness. Willfulness means that an action was intentional, deliberate or voluntary and not an accident or mistake. Therefore, your statement should include a clear explanation of your duties and responsibilities; and specifically, your duty and authority to collect, account for, and pay the trust fund taxes. Should you disagree with how we calculated the penalty, your statement should identify the dates and amounts of payments that you believe we didn't consider and/or any computation errors you believe we made;

**NOTE:**

To declare that the statement in item 6 is true under penalties of perjury, you must add the following to your statement and sign it:

"Under penalties of perjury, I declare that I have examined the facts presented in this statement and any accompanying information, and, to the best of my knowledge and belief, they are true, correct, and complete."

7. If you rely on a law or other authority to support your arguments, explain what it is and how it applies.

**REPRESENTATION**

You may represent yourself at your conference or have someone who is qualified to practice before the Internal Revenue Service represent you. This may be your attorney, a certified public accountant, or another individual enrolled to practice before the IRS. If your representative attends a conference without you, he or she must file a power of attorney or tax information authorization before receiving or inspecting confidential tax information. Form 2848, Power of Attorney and Declaration of Representative, or Form 8821, Tax Information Authorization, may be used for this purpose. Both forms are available from any IRS office. A properly written power of attorney or authorization is acceptable.



If your representative prepares and signs the protest for you, he or she must substitute a declaration stating:

1. That he or she submitted the protest and accompanying documents, and
2. Whether he or she knows personally that the facts stated in the protest and accompanying documents are true and correct.

## **CLAIMS FOR REFUND AND CONSIDERATION BY THE COURTS**

### **CONSIDERATION BY THE COURTS**

If you and the IRS still disagree after your conference, we will send you a bill. However, by following the procedures outlined below, you may take your case to the United States Court of Federal Claims or to your United States District Court. These courts have no connection with the IRS.

Before you can file a claim with these courts, you must pay a portion of the tax liability and file a claim for refund with the IRS, as described below.

### **SPECIAL BOND TO DELAY IRS COLLECTION ACTIONS FOR ANY PERIOD AS SOON AS A CLAIM FOR REFUND IS FILED**

To request a delay in collection of the penalty by the IRS for any period as soon as you file a claim for refund for that period, you must do the following within 30 days of the date of the official notice of assessment and demand (the first bill) for that period:

1. Pay the tax for one employee for each period (quarter) of liability that you wish to contest, if we've based the amount of the penalty on unpaid employment taxes; or pay the tax for one transaction for each period that you wish to contest, if we've based the amount of the penalty on unpaid excise tax.
2. File a claim for a refund of the amount(s) you paid using Form(s) 843, Claim for Refund and Request for Abatement.
3. Post a bond with the IRS for one and one half times the amount of the penalty that is left after you have made the payment in Item 1.

If the IRS denies your claim when you have posted this bond, you then have 30 days to file suit in your United States District Court or the United States Court of Federal Claims before the IRS may apply the bond to your trust fund recovery penalty and the interest accruing on this debt.

## **CLAIM FOR REFUND WITH NO SPECIAL BOND**

If you do not file a special bond with a prompt claim for refund, as described above, you may still file a claim for refund following above action items 1 and 2, except these action items do not have to be taken in the first 30 days after the date of the official notice of assessment and demand for the period.

If IRS has not acted on your claim within 6 months from the date you filed it, you can file a suit for refund. You can also file a suit for refund within 2 years after IRS has disallowed your claim.

You should be aware that if IRS finds that the collection of this penalty is in jeopardy, we may take immediate action to collect it without regard to the 60-day period for submitting a protest mentioned above.

For further information about filing a suit you may contact the Clerk of your District Court or the Clerk of the United States Court of Federal Claims, 717 Madison Place, NW, Washington, D.C. 20005.

If we do not hear from you within 60 days from the date of this letter (or 75 days if this letter is addressed to you outside the United States), we will assess the penalty and begin collection action.

Sincerely yours,

Revenue Officer

Enclosures:  
Form 2751  
Publication 1  
Envelope

**Proposed Assessment of Trust Fund Recovery Penalty**  
(Sec. 6672, Internal Revenue Code, or corresponding provisions of prior internal revenue laws)

**Report of Business Taxpayer's Unpaid Tax Liability**

Name and address of business

Global Construction, Inc.  
STREET ADDRESS CITY,  
STATE, ZIP

Tax Return Form Number	Tax Period Ended	Date Return Filed	Date Tax Assessed	Identifying Number	Amount Outstanding	Penalty
941	12/31/2018	11/20/2019	11/20/2019	06-xxxxxxx	\$71,928.62	\$45,939.84
941	03/31/2019	11/20/2019	11/20/2019	06-xxxxxxx	\$86,143.81	\$54,929.60
941	06/30/2019	11/20/2019	11/20/2019	06-xxxxxxx	\$72,568.00	\$44,929.60
941	09/31/2019	11/20/2019	11/20/2019	06-xxxxxxx	\$86,680.57	\$54,880.96
Totals:					\$317,321	\$200,680

**Agreement to Assessment and Collection of Trust Fund Recovery Penalty**

Name, address, and social security number of person responsible

Manager Joseph  
xxx-xx-1111  
Street Address  
City, State Zip

I consent to the assessment and collection of the penalty shown for each period, which is equal either to the amount of federal employment taxes withheld from employees' wages or to the amount of federal excise taxes collected from patrons or members, and which was not paid over to the Government by the business named above. I waive the 60 day restriction on notice and demand set forth in Internal Revenue Code Section 6672(b).

Signature of person responsible

Date

March \_\_\_\_, 2020

Internal Revenue Service  
ATTN: \_\_\_\_\_  
Street Address  
City, State Zip

RE: Manager Joseph  
Street Address  
City, State Zip  
SSN: \_\_\_\_\_

Dear \_\_\_\_\_:

My power of attorney (Form 2848) to represent the taxpayer in this matter is included.

Reference is made to the March 12, 2020 letter that proposed an assessment for unpaid trust funds in regard to the above named taxpayer for Global Construction Inc., a copy of which is attached. This is to protest the proposed assessment and to request a conference with the Appeals Division. The following information is submitted in support of this appeal.

**I. CONFERENCE**

The taxpayer wants to appeal the determination of the Internal Revenue Service, and requests a hearing before the Regional Office of Appeals in the East Hartford, Connecticut Appeals office.

**II. NAME AND ADDRESS**

Manager Joseph  
Street Address  
City, State Zip  
SSN: \_\_\_\_\_

**III. DATE AND SYMBOLS FROM LETTER**

March 12, 2020  
Letter 1153 (DO)(Rev. 3-2002)

#### **IV. TAX PERIODS**

12/31/2018  
03/31/2019  
06/30/2019  
09/30/2019

#### **V. ITEMIZED SCHEDULE OF APPEAL ITEMS**

The determination that the taxpayer is a responsible person as defined in IRC § 6672 for the unpaid trust funds for the tax periods listed above in the amount of \$200,680.

#### **VI. STATEMENT OF FACTS**

The taxpayer worked as job site manager for Global Construction, Inc., (“GLOBAL”). GLOBAL was in the construction business, and the taxpayer was responsible for managing the job site operations and overseeing the actual construction activities. The taxpayer’s specific duties included supervising of all job personnel, reviewing of job budgets, scheduling, attending job meetings, and consulting with the Company’s agents and employees as required.

The President of GLOBAL, Mr. Smith, was responsible for the finances. Mr. Smith ran operations in the office, and only he signed payroll checks and other documents as the sole shareholder. The taxpayer had no financial responsibilities in the Companies. The taxpayer had no signature authority, never signed a single check, legal document, or tax document. Ms. Carol D, who was in charge of payroll function for the years of 2012 to 2019, affirms that the taxpayer had nothing to do with nor signed a single check. A copy of her affidavit is attached.

#### **VII. LAW AND AUTHORITIES**

The issue is whether the taxpayer meets the definition of a “responsible person” who willfully failed to have the payroll taxes paid over to the government IRC § 6672.

IRC § 6672 states the following:

*Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over.*

In other words, pursuant to IRC § 6672 and Regulation § 301.6672-1, the Trust Fund Recovery penalty is only imposed on individuals who:

1. Were required to collect, account for and pay over the taxes, and
2. Willfully failed to do so.

Based upon the foregoing, the taxpayer, though a manager, lacked the functional responsibility for the payroll taxes of GLOBAL. He was never involved with the payroll function and in 10 years never signed a check or return for the Companies. It was not until the IRS sent him a letter that he learned that GLOBAL owed payroll taxes. Prior to that he had no knowledge nor access to the financial information of the company, and was never made aware by anyone that the company had failed to pay its payroll taxes or even had a money issue. Given that the taxpayer was never involved in GLOBAL's taxes and did not have knowledge of the payroll tax problem, he therefore lacked the requisite willfulness required under IRC § 6672. The taxpayer therefore should not be held responsible for GLOBAL's unpaid payroll taxes.

This protest was prepared by the undersigned based upon direct involvement of TAXPAYER. To the best of my knowledge and understanding all of the statements of facts contained in the protest are true and correct.

Very truly yours,

REPRESENTATIVE'S NAME

Enclosures  
C. Manager Joseph

February 28, 2020

**VIA FAX: 877-807-9215**

IRS FOIA Request  
HQ FOIA  
Stop 211  
PO Box 621506  
Atlanta, GA 30362-3006

**Re: Taxpayer: Manager Joseph**

**Current Address:** \_\_\_\_\_

**SSN:** \_\_\_\_\_

Dear Sir or Madam:

This is a request under the Freedom of Information Act.

**1. Name and Address**

Requestor:

Representative's Name  
Reps Street Address  
Rep City, State and Zip

Client:

Manager Joseph  
Taxpayer's Street Address  
Taxpayer's City, State and Zip

**2. Description of the Requested Records**

The undersigned represents Manager Joseph (the "Requestor"). We respectfully request copies of the taxpayers' administrative file regarding his civil penalties under IRC § 6672 for the quarters 12/31/2018 through and including 12/31/2019.

**3. Proof of Identity**

As proof of identity, I am including a photocopy of my driver's license and a copy of my Power of Attorney and Declaration of Representative (Form 2848).

**4. Commitment to Pay Any Fees Which May Apply**

{00050475.1 }

The undersigned is willing to pay for fees associated with this request. If the request shall exceed \$100, the undersigned requests to be notified.

**5. Compelling Need for Speedy Response**

We are in the middle of an Appeal of these civil penalties and require the information to properly present our case.

I declare that the above stated information is true and accurate to the best of my knowledge under the penalty of perjury.

Please call me with any questions.

Very truly yours,

Your Name



State of Connecticut )  
 ) ss. Town of Orange  
County of New Haven )

**AFFIDAVIT**

I, Carol D., of Orange, Connecticut hereby aver as follows:

1. That I am over eighteen years of age and believe in the obligations of an oath;
2. I was an employee of Global Construction, Inc. (“Company”) during the period of 2012 through its dissolution in 2019.
3. My role was Supervisor in-charge of payroll for the Company.
4. During Mr. Manager Joseph’s time as a work site manager at the Company he never signed a payroll check.
5. Manager Joseph never signed any tax returns or payroll-related documents
6. Manager Joseph was not involved in the payroll process at all.
7. The only person who signed payroll checks and determined which vendors to pay and not pay during my time with the company was the owner, Mr. Smith.
8. I am aware this affidavit is being submitted to the Internal Revenue Service for their consideration of a material tax matter.

Subscribed and sworn to, under penalty of perjury, this 23rd day of March, 2020.

\_\_\_\_\_  
WITNESSES NAME

Dated at Orange, Connecticut, this 23<sup>rd</sup> day of March, 2020.

\_\_\_\_\_  
Notary Public