

Circuit Court for Anne Arundel County  
Case No.: C-02-CV-23-000626

UNREPORTED  
IN THE APPELLATE COURT  
OF MARYLAND\*

No. 1541

September Term, 2023

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COMPTROLLER OF MARYLAND

v.

JOHN J. PEDDER, SR.

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Graeff,  
Tang,  
Eyler, Deborah, S.  
(Senior Judge, Specially Assigned),

JJ.

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Opinion by Eyler, J.

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Filed: September 18, 2024

\*This is an unreported opinion. This opinion may not be cited as precedent within the rule of stare decisis. It may be cited for its persuasive value only if the citation conforms to Rule 1-104(a)(2)(B).

After Portfolio Management Consulting, LLC (“PMC”) failed to withhold and remit income taxes for its employees in the 2016 tax year, the Comptroller of Maryland, the appellant, issued a final determination assessing John Pedder, Sr., the appellee,<sup>1</sup> a member in PMC, for the unpaid taxes. Mr. Pedder appealed that determination to the Maryland Tax Court, which held a hearing and reversed, ruling that he was not personally liable for the unpaid taxes because he did not exercise direct control over PMC’s fiscal management during the relevant time period. On judicial review of that decision, the Circuit Court for Anne Arundel County affirmed the decision of the Tax Court. On appeal, the Comptroller presents a single question, which we rephrase:

Did the Tax Court err as a matter of law by determining that Mr. Pedder did not exercise direct control over PMC’s fiscal management?

For the following reasons, we answer this question “No,” and affirm the judgment.

### **FACTS AND PROCEEDINGS**

In December 2003, Mr. Pedder filed articles of incorporation forming PMC as a Maryland limited liability company for the purpose of providing management services to senior federal government employees who oversaw major programs. Mr. Pedder recruited Gerard Pastore to become a member of the LLC. Mr. Pastore owned a 51% interest in PMC and Mr. Pedder owned the remaining 49%.<sup>2</sup>

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<sup>1</sup> Mr. Pedder represented himself before the Tax Court and before the circuit court. He did not file a brief in this Court.

<sup>2</sup> The partners made nominal “capital contributions” consistent with their ownership interests of \$51 and \$49, respectively.

PMC did not have an office. Rather, Mr. Pedder and Mr. Pastore worked out of their homes, in Derwood, Maryland, and Northern Virginia, respectively. Twice a month they met in person at a location halfway between their homes to discuss the business.

Under its Operating Agreement, PMC’s management was “vested in the Members without an appointed manager.” Although the Operating Agreement provided that the members would elect three officers (president, treasurer, and secretary), they did not do so. Members were entitled, upon reasonable notice, to request information about PMC’s financial condition, copies of its tax returns, and any other information reasonably related to the conduct of PMC’s business affairs.

In September 2004, Mr. Pastore and Mr. Pedder opened a business account for PMC with Bank of America. Each man had check writing authority and a debit card on the account. Mr. Pastore maintained physical custody of the checkbook.

#### **A. The Unpaid Taxes**

Under state and federal law, employers are obligated to withhold income taxes for employees and hold those funds in trust for the government. As pertinent, Md. Code (1988, 2022 Repl. Vol.), section 10-906(a) of the Tax General Article (“TG”) provides that an employer must “withhold the income tax required to be withheld” under other provisions of State and federal law and “pay to the Comptroller the income tax withheld for a period[.]” The income tax withheld is “deemed to be held in trust for the State for the employer[.]” TG § 10-906(b). It is undisputed that during the 2016 tax year, PMC failed to withhold income taxes for its approximately twenty employees.

In March 2017, Mr. Pedder received a letter from the Internal Revenue Service (“IRS”) concerning unpaid federal income taxes. He forwarded the letter to Mr. Pastore and PMC’s accountant. In an attempt to alleviate PMC’s financial troubles, Mr. Pedder loaned PMC over \$72,000, evidenced by two promissory notes executed June 7, 2017, and October 12, 2017, respectively.<sup>3</sup>

On May 30, 2018, Mr. Pedder and Mr. Pastore, individually and on behalf of PMC, entered into a Membership Interest Redemption Agreement (“the Redemption Agreement”) by which Mr. Pedder withdrew from PMC, leaving Mr. Pastore as the sole member. The Redemption Agreement provided that the unpaid balance on the promissory notes would be accelerated and paid in full no later than December 31, 2018. Mr. Pastore and PMC further agreed to be solely obligated for any outstanding tax liability and to indemnify Mr. Pedder for any taxes, penalties, interest, or expenses incurred by him relative to PMC’s outstanding tax liability.

## **B. Proceedings Before the Comptroller**

On November 20, 2019, the Comptroller assessed Mr. Pedder for \$74,966 in Maryland income taxes unpaid by PMC, plus interest and penalties. Personal liability for the failure to withhold income taxes is governed by TG § 10-906(d), which states:

*(d) If an employer or payor negligently fails to withhold or to pay income tax in accordance with subsection (a) of this section, personal liability for that income tax extends:*

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<sup>3</sup> The first note, with a principal balance of \$44,000, was to be repaid in eight monthly installments of \$5,000 and one \$4,000 installment beginning in July 2017. The second note, with a principal balance of \$28,070.36, was to be repaid in twelve monthly installments of \$2,340 beginning in November 2017.

- (1) to the employer or payor;
- (2) if the employer or payor is a corporation, to:
  - (i) any officer of the corporation who exercises direct control over its fiscal management; or
  - (ii) any agent of the corporation who is required to withhold and pay the income tax; and
- (3) *if the employer or payor is a limited liability company . . . or a limited liability partnership . . . , to:*
  - (i) *any person who exercises direct control over its fiscal management; and*
  - (ii) any agent of the limited liability company or limited liability partnership who is required to withhold and pay the income tax.

(Emphasis supplied.)

Mr. Pedder contested personal liability under TG § 10-906(d) at a hearing before a hearing officer on January 27, 2020. On October 29, 2021, the Comptroller issued a Notice of Final Determination finding that Mr. Pedder was personally liable for the unpaid taxes because he “maintained check signing authority, per his own admission exercised that authority on at least one occasion and acknowledged being an owner and officer of the business.”<sup>4</sup>

Mr. Pedder appealed that determination to the Tax Court.

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<sup>4</sup> The controlling language of TG § 10-906(d) provides that when the employer is a limited liability company, personal liability can fall on “any person” exercising direct control over fiscal management, regardless of whether the person is an owner or officer. As noted above, PMC did not have officers.

### **C. The Tax Court Hearing**

The Tax Court held a hearing on February 15, 2023. Mr. Pedder represented himself.

Mr. Pedder testified that although he had check signing authority for PMC throughout his tenure with the company, he only signed one check during more than thirteen years as a member. That check, dated August 4, 2016, was made out to him and indeed was his paycheck. He explained that he received it in the mail while he was away on vacation and discovered that Mr. Pastore had neglected to sign it. He called Mr. Pastore, who advised him that he could just sign it himself. Mr. Pedder did so. He did not sign any other checks.

Mr. Pastore was tasked with paying PMC’s bills and taxes, managing ordinary employee pay, and selecting PMC’s accountant. Mr. Pedder’s role was to “drum up business and to negotiate contracts[.]”

The court admitted into evidence an affidavit drafted by Mr. Pedder and signed by Mr. Pastore in which Mr. Pastore took full responsibility for the fiscal management of PMC during the relevant period and for the failure to remit state and federal taxes. Mr. Pedder testified that the affidavit accurately reflected Mr. Pastore’s role at PMC based upon Mr. Pedder’s experience with the company. In the affidavit, Mr. Pastore stated that he determined PMC’s financial policies; directed and authorized the payment of bills; prepared, managed, and authorized payroll; and was the only person at PMC carrying out these responsibilities.

The Tax Court also admitted reports of interviews conducted by the IRS relative to “Trust Fund Recovery Penalty or Personal Liability for Excise Taxes,” for Mr. Pastore and

Mr. Pedder, known as a Form 4180. Mr. Pedder testified that the IRS determined that Mr. Pastore was responsible for the failure to withhold income taxes for PMC’s employees and that Mr. Pedder was not “at fault[.]”

On cross-examination, Mr. Pedder reaffirmed that he had check signing authority and acknowledged that he had a business debit card that he used from time to time to entertain clients and to buy office supplies for his home office. He denied that he and Mr. Pastore discussed revenue during their twice monthly face to face meetings.

According to Mr. Pedder, Mr. Pastore had hired PMC’s accountant, although he informally approved the hire. He and Mr. Pastore met with the accountant annually to review tax returns. He could not recall if he personally signed PMC’s tax returns, but he believed that Mr. Pastore signed them.

Mr. Pedder testified that he was “absolutely livid” and felt “blindsided” when he learned, in March 2017, that PMC had not withheld state or federal taxes for its employees in 2016. At that point, he got “very involved . . . to make sure that all bills were paid[.]” He reviewed “every nickel, dime that [Mr. Pastore] spent . . . [a]nd where it went.”

Also in 2017, PMC continued to pay its employees, subcontractors, made one installment payment to Mr. Pedder on the first promissory note, and paid salary to Mr. Pedder and Mr. Pastore. The Tax Court questioned Mr. Pedder about why he would continue to get paid after he learned about PMC’s outstanding tax liability. Mr. Pedder responded that it was his only income.

The Comptroller argued that Mr. Pedder exercised direct fiscal management over PMC based upon the following: 1) he owned a 49% interest in the company; 2) his name

was on the business checking account; 3) he had check signing authority; 4) he possessed a business debit card; and 5) he chased business leads for PMC and negotiated contracts. In its view, the “most telling” evidence was that, when Mr. Pedder became aware of PMC’s tax liability, he took control of PMC’s fiscal management. This showed that “[h]e had the authority and the ability to do that earlier, he simply may not have been exercising that.” It emphasized that Mr. Pedder had access to PMC’s financial records and could have questioned Mr. Pastore about fiscal management issues during their twice monthly meetings.

The Comptroller emphasized that all the evidence Mr. Pedder introduced was self-serving. Further, Mr. Pedder loaned PMC the entire amount of the tax liability in 2017 – after he knew about the failure to remit the taxes – but did not cause PMC to pay the outstanding taxes. The Comptroller argued that both federal decisions interpreting a parallel provision of federal law, as well as Maryland decisions of this Court, made clear that day-to-day management of a business was not a prerequisite to impose personal liability.

#### **D. The Tax Court’s Ruling**

The Tax Court took a recess and ruled from the bench. It found that Mr. Pastore “managed the in-house operations” for PMC and that Mr. Pedder was the “on the street sales person[.]” It determined that TG § 10-906(d) requires a showing that Mr. Pedder was significantly engaged in fiscal management of PMC in order for him to be personally liable for the unpaid taxes.



The Tax Court observed that there were two periods of time about which evidence was introduced relative to Mr. Pedder’s fiscal management of PMC: pre- and post-awareness (by him) of the tax liability. The court found the evidence adduced by the Comptroller during the pre-awareness period to be “sparse.” It showed that Mr. Pedder’s only direct involvement in PMC’s financial matters was his signing the one check made out to himself that Mr. Pastore had forgot to sign. The court ruled that this evidence was legally insufficient to show that Mr. Pedder exercised direct fiscal management of PMC during the time the taxes were not being paid, which was before he knew about the unpaid taxes.

In the post-awareness period, Mr. Pedder was “engaged in reviewing checks to make sure creditors would be paid.” The Tax Court found that this conduct, taking place as it did after PMC had failed to withhold and remit the taxes, was not relevant to the issue of personal liability under the statute and, in any event, still did not rise to the level of exercising direct fiscal management of PMC. The Tax Court entered an order reversing the Comptroller’s Final Determination.

#### **E. Judicial Review**

The Comptroller petitioned for judicial review of the Tax Court’s decision in the Circuit Court for Anne Arundel County. The court heard argument and affirmed the Tax Court’s decision. This timely appeal followed.

#### **STANDARD OF REVIEW**

“Because the Tax Court is an administrative agency, its decisions are reviewed under the same appellate standards generally applied to agency decisions.” *Comptroller of*

*Treasury v. Johns Hopkins Univ.*, 186 Md. App. 169, 181 (2009). “We review the decision of the Tax Court, not the ruling of the circuit court on judicial review.” *Id.* In conducting that review, this Court determines “if there is substantial evidence in the record as a whole to support the agency’s findings and conclusions,” and “if the administrative decision is premised upon an erroneous conclusion of law.” *Comptroller of Treasury v. Taylor*, 465 Md. 76, 86 (2019) (quotation marks and citation omitted). “A reviewing court should defer to the agency’s fact-finding and drawing of inferences if they are supported by the record.” *Md. Aviation Admin. v. Noland*, 386 Md. 556, 571 (2005) (quotation marks and citation omitted).

“Unlike an agency’s findings of fact, its conclusions of law are reviewed de novo for correctness.” *Cosgrove v. Comptroller of Md.*, \_\_ Md. App. \_\_, \_\_, No. 1030, Sept. Term, 2023, slip op. at 8 (filed Aug. 29, 2024) (citing *Comptroller of Md. v. FC-GEN Operations Invs. LLC*, 482 Md. 343, 360 (2022)). The term “errors of law” encompasses four categories: “(1) the constitutionality of an agency’s decision; (2) whether the agency had jurisdiction to consider the matter; (3) whether the agency correctly interpreted and applied applicable case law; (4) and whether the agency correctly interpreted an applicable statute or regulation.” *FC-GEN Operations Invs.* 482 Md. at 360. Although courts do not defer to agency decisions when reviewing the first three categories, we “occasionally apply agency deference when reviewing errors of law related to the fourth category.” *Id.* (emphasis added). If any deference is owed, it is accorded to the Comptroller, not the Tax Court. *Id.* at 378.

## DISCUSSION

The Comptroller, acknowledging that the facts in evidence were undisputed, contends that, on those facts, the Tax Court erred as a matter of law by applying an incorrect legal standard in deciding whether Mr. Pedder exercised direct control over the fiscal management of PMC. It asserts that the Tax Court ruled that the “routine writing of checks” was a prerequisite to show the necessary level of control and failed to recognize that “a far broader array of responsibilities and activities” could show direct control over fiscal management. If the Tax Court had applied the correct standard, the Comptroller argues, the “only possible conclusion” was that Mr. Pedder exercised the requisite degree of control and therefore was personally liable for the unpaid taxes. It asks this Court to reverse the Tax Court’s decision and remand with instructions to enter an order affirming the final determination of the Comptroller.

Because the Comptroller’s argument turns upon the application of TG § 10-906 to the undisputed facts, we begin with the statutory language. “The cardinal rule of statutory interpretation is to ascertain and effectuate the intent of the Legislature.” *Al Czervik, LLC v. Mayor & City Council of Baltimore*, 259 Md. App. 91, 102 (2023) (quotation marks and citation omitted). “If the statute is free of ambiguity, we generally will not look beyond the words of the statute to determine legislative intent.” *Md.-Nat’l Cap. Park & Plan. Comm’n v. Anderson*, 164 Md. App. 540, 569 (2005), *aff’d*, 395 Md. 172 (2006). In other words, “[i]f the words of the statute, construed according to their common and everyday meaning, are clear and unambiguous and express a plain meaning, we will give effect to the statute

as it is written.” *Junek v. St. Mary’s Cnty. Dep’t of Soc. Servs.*, 464 Md. 350, 358 (2019) (quotation marks and citation omitted).

TG § 10-906(d) is clear and unambiguous. If a limited liability company “negligently fails to withhold or to pay income tax . . . , personal liability for that income tax extends . . . to . . . any person who *exercises direct control over its fiscal management*[.]” TG § 10-906(d)(3)(1) (emphasis added). By using the word “exercises,” the legislature declined to impose liability on persons with the mere authority to act. To construe the statute otherwise would render that word meaningless. *See Breslin v. Powell*, 421 Md. 266, 287 (2011) (A statute must be read “to avoid rendering . . . any portion[] meaningless, surplusage, superfluous or nugatory.” (quotation marks and citation omitted)). Furthermore, by using the phrase “direct control,” the legislature conditioned personal liability on active engagement in fiscal management, not mere awareness of the company’s profits and losses. Read together, the language “exercises direct control over its fiscal management” plainly and unambiguously makes a member of a limited liability company personally liable for a failure to withhold and remit income taxes if, and only if, he or she actively engaged in the management of the business’s finances.

This Court’s decision in *Comptroller of the Treasury v. House*, 68 Md. App. 560 (1986), upon which the Comptroller relies, is not to the contrary. There, the Comptroller appealed from a judgment of the circuit court reversing on judicial review a Tax Court ruling finding Homer House, M.D., personally liable, as an officer of Physicians Management Services, Inc. (“PASI”), for that company’s failure to withhold and remit income taxes. The evidence before the Tax Court established that Dr. House was a majority

shareholder of PASI, one of its three directors, and the chairman of its board; was listed as the owner and responsible officer on PASI's Maryland Employer Withholding Application; and was authorized to draw upon PASI's corporate account. Dr. House testified at the Tax Court hearing that he “never intended to involve himself in the business operations[,]” relying on PASI's president, who was held personally liable in a separate proceeding, to handle those matters. *Id.* at 563-64, 564 n.3. He had informed the president about “business opportunities” on several occasions, however, and directed him to fire a computer programmer. *Id.* at 564. Significantly, at some point prior to 1981, Dr. House had investigated and spearheaded the acquisition of a computer to serve as “the guts of PASI's billing services[,]” for a cost of \$66,000. *Id.*

Before Dr. House learned that PASI had not paid withholding taxes, he knew that PASI was experiencing significant financial troubles. He made multiple loans to the company, some he characterized as “exorbitant,” to cover payroll and purchase software for the computer, and then brought his wife in to oversee the president's spending, directing her to ““insure [sic] that checks were not written unless there was money in the bank to cover them.”” *Id.* He “kept himself apprised of PASI's financial status by attending annual meetings” and meeting with the president. *Id.* at 565. Again, this all took place before he learned of the tax liability.

After the Tax Court ruled that Dr. House was an officer of PASI who exercised direct control over its fiscal management, he sought judicial review in the circuit court. The court reversed the Tax Court, determining, as pertinent, that the term “direct control” meant “day-to-day control” of fiscal management. *Id.* at 568.

On appeal, we reversed the circuit court and affirmed the Tax Court’s ruling. We held that the circuit court’s construction of “direct control” was “inordinately narrow” and contravened the intent of the legislature in enacting the predecessor statute to TG § 10-906(d). *Id.* Emphasizing the evidence before the Tax Court that Dr. House advised PASI’s president of business opportunities and risks, involved himself in the purchase of PASI’s computer, and “played a significant role in attempting to extricate PASI from its financial problems,” this Court determined that the evidence was legally sufficient to support the Tax Court’s ruling. *Id.*

In the instant case, the Comptroller takes the position that Mr. Pedder exercised a similar level of control over PMC’s fiscal management as Dr. House did over PASI’s fiscal management. We disagree. Although Mr. Pedder was authorized to sign checks on behalf of PMC, he actually exercised that authority once over a period of nearly fourteen years, for the purpose of signing his own paycheck, and then only after checking with Mr. Pastore first. His use of the company debit card was not to make “significant expenditures,” as the Comptroller argues, but to pay for dinners with potential clients and to purchase home office supplies. This is quite unlike Dr. House’s purchase of a computer in the late 1970s or early 1980s, which was newly developed technology at that time that created a billing system for the business and was a major investment. Likewise, Dr. House’s involvement in trying to extricate PASI from financial difficulties *preceded* his knowledge of PASI’s tax liability. In our case, Mr. Pedder only became actively involved in PMC’s finances in March 2017, after the tax liability had accrued and he first learned of it.

The Comptroller also points us to federal cases applying a provision of the Internal Revenue Code, 26 U.S.C. § 6672(a), that imposes a penalty upon “[a]ny 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[.]” It asserts that, because the Supreme Court of Maryland has construed TG § 10-906(d) to have ““a broader scope”” than the federal statute, quoting *Lyon v. Campbell*, 324 Md. 178, 188 (1991), a “responsible person” under § 6672(a) is “necessarily a person of sufficient authority to be liable under Maryland law[.]” It is mistaken.

In *Lyon*, the Supreme Court reasoned that § 6672(a) and TG § 10-906(d) are “markedly different” both because the federal statute imposes a penalty, rather than making a responsible person personally liable for unpaid taxes, and because the federal statute requires a showing of willfulness in the failure to withhold and remit taxes, rather than mere negligence under the Maryland statute.<sup>5</sup> 324 Md. at 188. The latter difference was the reason that the Court remarked that TG § 10-906(d) was broader than the federal statute and would impose liability on persons who would not be penalized under § 6672. The federal statute does not, however, include a requirement that a responsible person

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<sup>5</sup> *Lyon* involved a certified question of law from the United States District Court for the District of Maryland asking whether a corporate officer held personally liable under TG § 10-906(d) could seek contribution from other corporate officers who are alleged to have also exercised direct control of the company’s fiscal management. 324 Md. at 179-80. The Supreme Court of Maryland answered that question in the affirmative, rejecting the argument that TG § 10-906 should be construed consistently with its federal counterpart. *Id.* at 184.

“exercised direct control over fiscal management” of a business. Thus, as the Tax Court correctly reasoned, the Maryland statute imposes liability upon a narrower class of persons. Because the sole issue before us concerns whether there was legally sufficient evidence that Mr. Pedder exercised the level of direct financial control necessary to fall within that class, the federal cases are not pertinent to our analysis.

The evidence before the Tax Court showed that Mr. Pedder’s role was to solicit contracts and develop revenue streams for PMC. He was PMC’s business developer. Mr. Pastore’s role was to manage the company’s finances by the hiring and onboarding employees and contractors, including its accountant; handling payroll; paying creditors; and paying taxes. That Mr. Pedder signed one check, used a company debit card for business dinners and personal business expenses, and informally approved the selection of PMC’s accountant does not alter his role. Evidence that Mr. Pedder *could have exercised* control over PMC’s fiscal *management* prior to the failure to withhold taxes is not relevant to whether he actually exercised the direct control necessary to give rise to liability under TG § 10-906(d). For all these reasons, we hold that the evidence before the Tax Court was insufficient as a matter of law to show that Mr. Pedder exercised direct control over PMC’s fiscal management during the time period material to this case. We thus affirm the decision of the circuit court affirming the decision of the Tax Court.

**JUDGMENT OF THE CIRCUIT COURT FOR  
ANNE ARUNDEL COUNTY AFFIRMED.  
COSTS TO BE PAID BY THE APPELLANT.**