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CEO Personally Liable For Company Payroll Taxes

The [Court of Appeals for the Federal Circuit](#) has upheld a trial court holding that the majority owner, CEO, and principal financier of a publishing company was responsible for payroll taxes he claimed he didn't handle. The CEO had a duty to collect, account for, and pay the trust fund taxes, and he willfully failed to do so.

Business owners and other “[responsible persons](#)” have personal liability and excuses are rarely accepted. In [Jenkins v. U.S.](#), the majority owner and CEO was ruled responsible. He didn't exercise day-to-day control, but he had the authority to do so, the court said.

Besides, he knew payroll taxes were probably unpaid even if he wasn't personally handling the checks and payment. You can be liable for unpaid payroll taxes even if you have no knowledge the IRS is not being paid. See [What Is The Trust Fund Recovery Penalty?](#) Still, the taxpayer appealed his case to the Federal Circuit Court of Appeals.

Jenkins and a partner founded Dialogue Diaspora, Inc. in 1992. It published American Visions magazine and promoted African-American



culture. Jenkins was a majority stockholder, CEO, CFO, and publisher. He also was a major financial backer of DDI.

That mean he rented space to it, lent money and more. But after a falling out with his partner, Jenkins ousted him and wrote a series of company checks to himself in 1995 even though he knew payroll taxes were unpaid. He was just trying to pay himself back for loans, he claimed.

In 1998, the IRS levied on Jenkins' retirement account and Social Security benefits. Jenkins sued for a refund. The Court of Federal Claims sided with the IRS so Jenkins appealed.

He didn't exercise day-to-day decision making authority regarding the company's tax obligations, he argued. But the appellate court said Jenkins clearly possessed the effective *power* to do so. He wrote 13 checks to himself trying to recoup his investment, some of which were simply loan repayments.

Every time he wrote one of those checks, he should have wondered about the payroll taxes, the court said. Was he paying himself money that belonged to the U.S.? He may never have asked, but he **should** have.

He tried to claim he was really only a creditor and never exercised any authority. But the Federal Circuit concluded that the undisputed corporate records showed he was an officer, director and more. As to willfulness, the court rejected **all** his arguments.

Whether he actually **knew** the taxes weren't paid when he wrote himself each check, he clearly knew there was a **risk** the taxes weren't paid. That was enough. You can't just delegate your authority to someone else and turn a blind eye.

Jenkins even argued that his liability should be limited to the \$16,668 he took, not the vastly larger sum the IRS said was unpaid. That may have **sounded** fair, but that's not how it works, the court said. Under [Section 6672](#) of the tax code, the penalty applies to anyone who:

- is responsible for collecting, accounting for, and paying over payroll taxes; and
- willfully fails to perform this responsibility.

How much is the penalty? 100% of the payroll tax.

For more, see:

[9/11 Excuse Not Enough To Escape IRS Tax Bill](#)

[Officers Of Nonprofits Face Personal Liabilities For Taxes](#)

[Fail To Pay Payroll Tax: Go To Jail](#)

[With Taxes “Responsible” Means Holding The Bag](#)

[IRS “Responsible Person” Label Hurts](#)

[IRS Unveils Key Penalty Findings Don’t Cross IRS On Payroll Taxes](#)

[When Payroll Tax Cases Go Criminal Failing To Pay Employment Taxes Means Personal Liability](#)

[IRS Pursues Payroll Tax Pyramiding](#)

[No Get-Out-Of-Jail-Free Card For Payroll Tax Liability](#)

[Supreme Court Deaf To Payroll Tax Woes IRS Nightmare: What Employment Taxes?](#)

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