Forbes

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TAXES 08/22/19

Serve On Nonprofit Board, Face Tax Liability?

Serving on the board of directors of a nonprofit can be rewarding, but not if you end up paying for the organization's tax problems. Your first reaction might be to say what tax problems, for aren't nonprofits, especially public charities, tax exempt? Not entirely. For example, nonprofits that have employees *still* have to pay payroll taxes. And the IRS takes payroll tax liabilities pretty seriously. As with any employer, if the charity doesn't pay, the IRS has the ability to go after the individual officers, directors or check signers who could have done something about it. So don't sign checks and expect to skate if the IRS comes along. You can face personal liability for employment taxes. Even the U.S. Supreme Court may turn a deaf ear, letting stand a whopping $11 million in IRS penalties in *Davis v. United States*.

If you are labeled a responsible person, it means the IRS can pursue you personally for payroll taxes if the company fails to pay. The IRS can assess a Trust Fund Recovery Assessment, also known as a 100% penalty, against every responsible person. The IRS does this quite regularly, and has a regular system down, starting with Section 6672(a) of the tax code. Anyone with employees is expected to know that tax withholding must be taken and the money must be promptly sent to the IRS. The IRS views this as a trust fund that *belongs* to the IRS. You can be liable even if have no knowledge the IRS is not being paid.

The IRS tends to be unforgiving and the dollars add up quickly. And remember, charities and other nonprofit organizations with employees have to pay payroll taxes too. What's more, even if you're an unpaid volunteer you can be stuck with personal liability. Take the case of Anthony Cuda, *United States v. Cuda and Dankis*. Mr. Cuda was the operations director of Seneca Area Emergency Services, Inc. (SAES), a nonprofit providing ambulance and emergency medical services. It turned out that the office manager was embezzling and stopped paying bills—including the IRS. Poor old Mr. Cuda was responsible for overseeing day-to-day operations, had authority to sign checks and to provide input on prioritizing SAES's bill payments.

The IRS located Cuda and told him to pay up. Cuda tried everything to get out of it, arguing that:

1. He didn't know the taxes weren't being paid;
2. SAES was going bankrupt, and actually did file for bankruptcy protection; and
3. It was the CFO who should have collected and paid the taxes, not Cuda.

But the court rejected all of these arguments. The court said it wasn't in the business of assigning comparative fault. Each responsible person was 100% liable. Since Cuda was the one in court at the moment, he had to pay. When there are *multiple* officers, directors or signers whom the IRS is chasing, each responsible person in the IRS cross hairs tries to make sure someone *else* pays before they have to. Since the penalty is 100% of the taxes, the IRS can collect it only once.

This is not legal advice. For tax alerts or tax advice, email me at Wood@WoodLLP.com.