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Texan Gets 3 Years Prison For Payroll Taxes, Why You Should Avoid Violations

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Richard Floyd Tatum Jr., 57, a Houston, Texas business owner, was sentenced to 36 months in prison for failing to pay over employment taxes. That may sound like a relatively simple tax problem, but it is anything but. Some months ago Tatum [pleaded guilty](#) to one count of failing to pay over employment taxes. The dollar amount of the violation was staggering. His company, Associated Marine & Industrial Staffing Inc. (AMI), was an industrial staffing company. It provided temporary labor to businesses in Texas and in other states. Through his company, Tatum employed approximately 1,000 people assigned to work on-site at client locations.



As with most any employer, paying wages involves withholding taxes. Tatum was responsible for collecting, accounting for and paying over to the IRS the payroll taxes withheld from AMI's employees' wages. Tatum exercised significant control over AMI's finances, including entering into contracts, signing checks, making payroll, and deciding which creditors to pay. Tatum also signed and filed the company's IRS employment tax returns. But not everything went smoothly.

From March 2008 through December 2009, Tatum filed false and delinquent employment tax returns for the company, which did not report AMI's external employees. In May 2013 Tatum tried a partial fix, filing delinquent tax returns for the quarters ending in March 2010 through December 2012. These returns reported AMI's external employees, but he made no payments of the taxes owed. And the taxes owed were substantial. Tatum withheld approximately \$12

million in payroll taxes from his employees from March 2008 through December 2012, but did not pay over any of this money to the IRS. Tatum also failed to pay \$6 million of AMI's required share of social security and Medicare taxes during the same quarters.

Instead, he used the money for his personal benefit, including making payments on his ranch and traveling to Las Vegas, Hawaii and France. Tatum admitted that he caused a tax loss of more than \$18 million. In addition to the three-year term of imprisonment, Tatum was ordered to serve three years of supervised release, and to pay restitution to the IRS in the amount of \$18,298,604.

The case is yet another reminder that while income taxes are important, payroll taxes can be even more so. Every employer must withhold taxes from employee paychecks, sending the money to the IRS. The IRS calls this trust fund money, so if an employer fails to hand it over to the IRS, it is like theft. The IRS tends to push hard in such situations, especially when payroll tax failures reflect a pattern. The IRS can close a business, and sometimes even take court action to make it doubly clear that the IRS does not want a repeat performance.

Many businesses experience cash-flow squeezes from time to time. If you are in business, it can be tempting to figure that you have to keep the rent paid and supplies ordered. Besides, you might think that the IRS won't miss the payroll tax money if you just divert it temporarily. But, no matter how good the reason, the practice of failing to promptly pay over employment taxes is downright dangerous. It is one reason that in cases where the IRS catches the problem early, the IRS will encourage use of a payroll service. If the payroll service *automatically* takes out and remits all the payroll taxes, the business won't have the discretion to divert the money, even briefly.

The IRS does understand that companies get behind. And quick action and transparency with the IRS are key. That includes communicating with the IRS, and starting to make voluntary progress payments even as you work on a more long-term solution. Many of the employment tax cases that become criminal ones may involve flagrant behavior and even attempted cover-ups. You can have big problems with joint income tax returns too, as in the case of one couple with [joint tax returns, who got three years in prison — each](#). But make no mistake: employment tax violations can *especially* be playing with fire.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.