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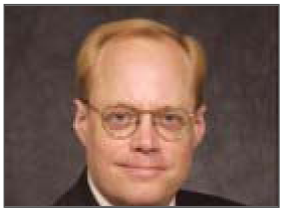

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THE TAX LAWYER

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9/11 Excuse Not Enough To Escape IRS Tax Bill

Image via blhsnews

Employers must withhold tax money from employee pay and send it promptly to the IRS. The IRS doesn't want the money to be used for other business needs no matter how essential. It's one reason I often recommend payroll services for small businesses—they handle the details so you can't be tempted.

If you're labeled a "responsible person" it means the IRS can pursue you ***personally*** for payroll taxes if the company doesn't pay. This happens to thousands of business owners every year. The IRS can assess a Trust Fund Recovery Assessment, also known as a 100-percent penalty, against every "responsible person." See Section 6672(a). You can be liable even if have no knowledge the IRS is not being paid.

If the IRS comes after you, arguing you had good reasons is generally ineffective. Take Michael Pinner, the sole shareholder and officer of Concert Staging Services Inc. When his company failed to pay the IRS levied and took them. Pinner went to Tax Court and argued the penalties should be removed because he had reasonable cause. See *Concert Staging Services, Inc. v. Commissioner*, a decision released last week.

His company was staging events at the World Trade Center and lost staging structures and equipment in the 9/11 attacks. Thereafter, the business incurred significantly higher insurance rates, etc. Nevertheless, the court was not persuaded that Pinner had acted reasonably so it declined to remove the penalties.

The IRS can pursue you personally only for the trust fund portion of the taxes. When business owners are trying to maximize the chance they won't be held personally liable, every payment can help reduce the liability. Well-advised taxpayers designate in writing when making a payment to which ***specific*** taxes (***trust fund***) the payment should be credited. Pinner sought a reduction in the taxes based on this argument, but you must designate in writing and Pinner didn't do that.

As a result, he could only argue that the IRS abused its discretion by applying the payments as it did. If the taxpayer fails to designate to trust fund taxes, the IRS can apply tax payments in any way that best serves the IRS! The Tax Court agreed with the IRS so Pinner lost.

Be ***very*** careful with payroll taxes. You may think you have reasonable cause, but it is a high standard in payroll tax matters. In *Oppliger v. United States*, the U.S. Court of Appeals for the Eighth Circuit ruled for the IRS, finding business owners to be liable and subject to a $2 million penalty even though an accountant embezzled the money and then died! See IRS Penalties Despite Dead/Embezzling Accountant!

For more, see:

IRS "Responsible Person" Label Hurts

Employers Who Violate Tax Law May Go To Jail

Supreme Court Deaf To Payroll Tax Woes

IRS Nightmare: What Employment Taxes?

With Taxes "Responsible" Means Holding The Bag

Personal Tax Liability When A Business Goes Under

Beware Personal Liability For Employee Taxes

Choose Your Ground In Tax Disputes

Internal Revenue Bulletin 2005-24

IRS Publication 15 (2011), (Circular E), Employer's Tax Guide

Robert W. Wood practices law with Wood LLP, in San Francisco. The author of more than 30 books, including Taxation of Damage Awards & Settlement Payments (4th Ed. 2009, Tax Institute), he can be reached at Wood@WoodLLP.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.