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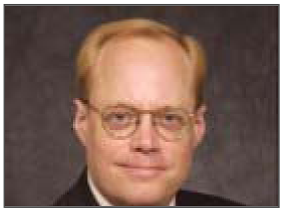

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Don't Cross IRS On Payroll Taxes

It's tough to get out of paying payroll taxes. When you withhold tax money from employees but fail to give it to the IRS, they will come after you. Quite rightly, the IRS views it as government money, a trust fund belonging to the IRS.

Image via vendorseek.com

In a cash-strapped business, keeping the lights on or the warehouse stocked can seem more important. It may be tempting to think you can always pay the IRS later. But these problems have a way of snowballing, so it's best to keep payroll taxes current at all times. Consider using a payroll service that directly pays the money over to the IRS.

One more good reason to be careful?

Personal Liability. Business owners and other "responsible persons" have personal liability for these taxes and excuses are rarely accepted. In *Colosimo v. U.S.*, the Eighth Circuit Court of Appeals refused to take sympathy on a company owner who claimed he was duped by his bookkeeper.

More recently, in *Jenkins v. U.S.*, the Court of Federal Claims held the majority owner and CEO of a publishing company responsible for payroll taxes. Although he didn't exercise day-to-day control, he had the authority to do so and he knew payroll taxes were unpaid. You can be liable even if have ***no knowledge*** the IRS is not being paid. See What Is The Trust Fund Recovery Penalty?

The IRS can assess a Trust Fund Recovery Assessment—also known as a 100-percent penalty—against every "responsible person." See Section 6672(a). In determining "willfulness," courts focus on whether you had knowledge of the non-payment of taxes or showed reckless disregard whether they were being paid. But a person need not actually perform the withholding and payment functions to be considered "responsible."

If you have signature authority but don't exercise it, that can be enough to result in liability. Factual nuances matter, so one person may get stuck while another gets off scot-free. The IRS often makes an assessment against every officer, watching them turn on each other.

For example, in *Johnson v. U.S.*, the IRS went after two employees for a casino's payroll taxes. Brian Toms was the secretary/treasurer responsible for making tax deposits and electronic transfers for payroll taxes. Bonnie Johnson was the CFO but was not a member of the board, nor an officer or shareholder. She was authorized to pay vendors in the morning before Brian arrived, but otherwise paid vendors only when Brian instructed.

Brian was held liable for the taxes but Bonnie was not. She had check-signing authority and even prepared and signed tax returns. However, she did not have control of the payroll, could not authorize tax deposits, and did not have authority to sign contracts. The court found that she did ***not*** have the authority to pay the IRS without permission from Brian.

Huge numbers of businesses each year get caught in this no-win situation. See Personal Tax Liability When A Business Goes Under. Disputes are expensive and often do not go well. Be careful out there.

For more, see:

IRS Penalties Despite Dead/Embezzling Accountant!

Employers Who Violate Tax Law May Go To Jail

IRS Nightmare: What Employment Taxes?

Personal Tax Liability When A Business Goes Under

Supreme Court Deaf To Payroll Tax Woes

IRS Pursues Payroll Tax Pyramiding

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