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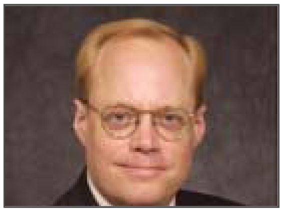

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THE TAX LAWYER

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Execs Get 10 Years Prison Over Company Taxes? Yes, Here's How

CEOs and CFOs can go to jail over company taxes. After the recent news that the former CEO of Arrow Trucking was sentenced to 7.5 years over payroll taxes, the CFO has also been sentenced. Between the two of them, they got over 10 years. Jonathan Leland Moore, 38, of Waxahachi, Texas, was the CFO. He was sentenced to 35 months in prison for conspiracy to commit bank fraud and to defraud the United States.

The CFO and CEO failed to pay and account for federal withholding taxes. The CEO got many payments outside the payroll system, but the CFO helped. According to the plea agreement and other court records, in 2009, Moore, the CEO and others withheld taxes on Arrow Trucking Company employee pay, but did not hand it over to the IRS. Instead, the paid for the CEO’s personal expenses. In total, the conspiracy caused a loss to the United States totaling more than $9.562 million.

If you’re in business, when you withhold taxes on employee wages, you’d better send it to the IRS. Don’t buy a Bentley, a Maserati, or pay for your wedding. Those are some of the purchases prosecutors claimed were made by the former CEO of Arrow Trucking Company, Mr. James Douglas Pielsticker. He was sentenced to seven and one-half years in prison for conspiracy to defraud the U.S., bank fraud and tax evasion. After that, he’ll have 3 more years of supervised release. And he was ordered to pay a whopping $21 million in restitution.

The feds take payroll taxes even more seriously than income taxes. Using tax money withheld from employees is stealing from the U.S. Treasury and unfair to employees too. Mr. Pielsticker, 47, formerly of Tulsa, Oklahoma, entered a guilty plea. According to his plea agreement and court records, in 2009, Pielsticker diverted tax money, paying personal expenses with money from Arrow Trucking Company. He submitted fraudulent invoices to cover it up.

Being being an officer or director can land you in the hot seat. If you're a responsible person the IRS can pursue you personally for payroll taxes if the company fails to pay. When a tax shortfall occurs, the IRS can make personal assessments against all responsible persons with ownership in or signature authority over the company. The IRS can assess a Trust Fund Recovery Assessment against every responsible person under Section 6672(a). You can be liable even if have no knowledge the IRS is not being paid. The penalty can be assessed against multiple responsible persons, allowing IRS to pursue them all to see who coughs up the money first.

Responsible means officers, directors, and anyone who makes decisions about who to pay or has check signing authority. Multiple owners and signatories generally squabble and do their best to sic the IRS on someone else. Factual nuances matter in this kind of mud-wrestling. So do legal maneuvering and just plain savvy. One responsible person may get stuck while another who is even more guilty may get off scot-free. Meanwhile, the government can still try to collect from the company that withheld on the wages.

The IRS also wants to make sure this kind of bad tax situation doesn't occur again. The government can move to shut down the business so the situation doesn't get worse. In extreme cases the government may seek criminal penalties. More commonly, if the government thinks the situation is getting worse, it can seek an injunction. Where a business gets deeper and deeper into tax debts, the practice is sometimes referred to as pyramiding.

You may think the IRS pursues all taxes equally but they don't. The IRS is especially vigorous in going after payroll taxes withheld from wages that are not promptly paid to the government. This is trust fund money that belongs to the government and was withheld from wages. That makes any failure to pay—or even late payment—much worse. In fact, that's so regardless of how or why the employer or its principals use the money.

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