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THE TAX LAWYER

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### Fail To Pay Payroll Tax: Go To Jail



Image via theexpgroup

**Do not pass go, do not collect \$200, go directly to jail.** When an employer withholds taxes but fails to send this [trust fund](#) money to the IRS, the agency gets serious. If you fail to pay and are a “[responsible person](#)” the IRS can pursue you *personally* even if you aren’t an owner of the business. In fact, the IRS can assess a [Trust Fund Recovery Assessment](#), also known as a 100-percent penalty, against *every* responsible

person. See [What Is The Trust Fund Recovery Penalty?](#)

You can be pitted against all the other [responsible persons](#), all of whom will be scrambling to avoid paying. The company is billed for the tax plus responsible persons can *each* be billed for 100 percent. Whoever pays first loses.

The IRS doesn’t like habitual offenders. The practice of using withheld taxes as working capital is sometimes referred to as “[pyramiding](#).” To make sure this doesn’t occur again, the government can seek to enjoin the bad behavior. See [IRS Pursues Payroll Tax Pyramiding](#).

Payroll tax violations can even become [criminal](#). Take [Peter Labovitz](#), who was sentenced to six months in prison for failing to pay employment taxes. He plead guilty to willfully failing to pay over the income taxes

and Social Security (FICA) taxes due for [Connections Newspapers LLC](#) which had a string of 15 community newspapers in Virginia and Maryland. See [President of Connection Newspapers Sentenced to Prison](#).

Labovitz ran day-to-day operations, directed employees, approved payments and made financial decisions. Between 2002 and 2008, he collected \$940,000 in payroll taxes but failed to hand the money over to the IRS. Labovitz was sentenced to six months in jail and one year of supervised release of home confinement. He was also ordered to pay \$647,510 in restitution to the IRS.

The IRS rarely pursues [criminal charges](#), but these are serious cases. Even in civil cases, the IRS doesn't like excuses. In [Oppliger v. United States](#), the court found business owners liable for a \$2M penalty even though an accountant embezzled the money and then died! See [IRS Penalties Despite Dead/Embezzling Accountant!](#) Even the U.S. Supreme Court may turn a deaf ear, as occurred in [Davis v. United States](#), where the Court let stand a whopping \$11 million in IRS penalties against four business owners and their accountant.

For more, see:

[IRS "Responsible Person" Label Hurts](#)

[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](#)

[No Get-Out-Of-Jail-Free Card For Payroll Tax Liability](#)

[Supreme Court Deaf To Payroll Tax Woes](#)

## Don't Cross IRS On Payroll Taxes

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