



Robert W. Wood

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IRS Penalties Despite Dead/Embezzling Accountant!

It almost sounds like the punch-line to a joke. If your accountant embezzles your money, does that relieve you of IRS penalties? How about if the embezzling accountant then dies? It may sound silly, but that fact pattern was not enough to get business owners out from under a \$2 million IRS penalty on payroll tax failures. In [Oppliger v. United States](#), the U.S. Court of Appeals for the Eighth Circuit ruled for the IRS, finding business owners to be “responsible persons” subject to a \$2 million penalty for employment taxes.

If you’re labeled a “responsible person” it means the IRS can pursue you for payroll taxes, as 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. See [What Is The Trust Fund Recovery Penalty?](#)

The penalty is asserted against owners as well as non-owner officers and check signers even if they did not benefit from diverted money. If you have check-signing authority and **could have** paid the IRS, you may be stuck even if you had no idea the IRS wasn’t being paid. Although “willfulness” is one element, the courts have focused on whether a taxpayer had knowledge about the non-payment of the payroll taxes, or showed reckless disregard with respect to whether the payments were being made.

Case in Point. James and Gayle Oppliger were sole owners and primary officers of a trucking business called Double O. They also owned and ran a separate payroll company for Double O called LFC. In 1996, the Oppligers hired Mary Kerkman to handle accounting and tax returns for both companies. She handled payroll taxes and gave them weekly reports. She committed suicide on April 3, 2002 and the IRS showed up the very next day reporting that more than 3 years of payroll taxes were delinquent! This was the first time they knew there was a problem, and they also discovered at that point that Kerkman had embezzled \$10,000.

Over the next few months, from April through August 2002, LFC paid \$2,117,640.43 to its employees and \$3,240,138.60 to third-party creditors. The Oppligers sold Double O's assets on September 1, 2002.

The IRS assessed penalties against the Oppligers for LFC's and Double O's unpaid taxes. The Oppligers argued they that they were not responsible. A federal district court held the Oppligers liable. After all, they had paid employees and third parties over \$5 million **after** the IRS informed them of their outstanding tax liabilities!

The Oppligers appealed, but the Eighth Circuit upheld the penalties. The court specifically refuted their claim that the embezzling accountant deprived them of an opportunity to make informed decisions. First the accountant stole, then she died. Still, the penalties stuck.

For more, see:

[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](#)

*Robert W. Wood practices law with [Wood & Porter](#), 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@woodporter.com. This discussion is not intended as legal advice, and cannot be relied upon for any purpose without the services of a qualified professional.*