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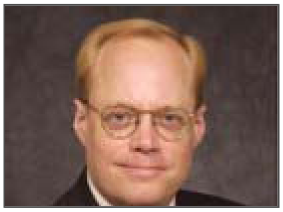

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Paying In Cash? Careful, It Can Mean Jail

Who doesn't like cash? If you're on the receiving end, it is hard to argue with it. If you're paying in cash it could entitle you to a discount or encourage you not to spend too much. What's more, employees, independent contractors, merchants and vendors all might smile if you hand over cash instead of a check or plastic.

But be careful. Cash still has to be reported as income, and you still have to keep records. There's also special cash reporting, on IRS Form 8300 for Reporting Cash Payments of Over $10,000. The IRS even has a list of FAQs Regarding Reporting Cash.

Paying cash doesn't mean you don't have employees or that your workers are automatically independent contractors either. In the case of employment taxes, the IRS still wants its cut. The IRS takes all taxes seriously, but employment taxes can be even more sensitive than income taxes. Much of the money is actually the IRS's money held in trust, so skirting employment taxes can be even more serious than skirting income taxes.

(Photo credit: 401(K) 2013)

A good example is the indictment on tax charges of three men in Pennsylvania, Vanny Son, 33, Son Thach, 55, and Hung Danh, 54. They allegedly participated in a tax scheme costing the IRS over $1 million. U.S. Attorney Peter Smith alleges that Son and Thach operated five employee leasing businesses between 2006 and 2012, paying their employees over $7 million in cash without withholding income or payroll taxes.

Employers must withhold income taxes from employee wages based on the number of allowances employees claim on the Form W-4. Employers also have to withhold FICA taxes from wages and promptly pay them. There are quarterly and annual employment tax forms too. Apart from the trust fund portion that represents money withheld from employee wages, the employer also pays a share.

If convicted, these three Pennsylvania men face up to five years' imprisonment and $250,000 in fines for conspiracy count and tax evasion charges. They could also face up to three years' imprisonment and $250,000 in fines for filing false tax returns. And then there is paying the tax money as restitution to the IRS.

Often, there is little or no defense to employment tax charges. And they can strike just about anywhere. A Queens, New York CPA, Silford Warren, plead guilty to failing to pay employment taxes for his accounting firm. According to his plea agreement, he under-reported employee salaries from 2006 through 2008.

He failed to collect and pay over employment taxes of approximately $108,000. Mr. Warren's plea agreement required him to pay $184,263 of restitution to the IRS. The potential maximum sentence was five years in prison and a fine of up to $250,000.

If you misstep, even civil employment tax cases are no fun. In fact, proving that you have reasonable cause can be tough. In *Oppliger v. U.S.*, the court found business owners liable and subject to a $2 million penalty even though their Embezzling Accountant absconded with the money and then died! Apart from criminal charges, the government can also seek an injunction against a company and its owners.

Remember, business owners and other responsible persons have personal liability, and excuses are rarely accepted. In *Colosimo v. U.S.*, the court had little sympathy for a company owner who claimed he was duped by his bookkeeper. In Jenkins v. U.S., the owner and CEO of a publishing company didn't exercise day-to-day control over the business, but he knew payroll taxes were unpaid. The verdict: he was on the hook. Indeed, you can be liable even if have no knowledge the IRS is not being paid.

You can reach me 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.