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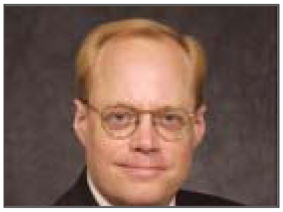

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Payroll Taxes Can Bring IRS To Your Door, Even Land You In Jail

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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. Using the money to pay suppliers and keep the business open isn't a good reason in the IRS view.

When a tax shortfall occurs in this setting, the IRS will usually make personal assessments against all responsible persons who have ownership in or signature authority over the company and its payables. The IRS can assess a Trust Fund Recovery Assessment, also known as a 100-percent penalty, against every "responsible person" under Section 6672(a). You can be liable even if have no knowledge the IRS is not being paid.

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. The 100% penalty equals the taxes not collected. The penalty can be assessed against multiple responsible person, 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.

When multiple owners and signatories all face tax bills they generally squabble and do their best to sic the IRS on someone else. Factual nuances matter in this kind of mud-wrestling, but 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 will 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, the government may seek to enjoin this behavior. If the government thinks the situation is getting worse, it can seek an injunction. The idea is to stop the bleeding so the government gets its tax money. Where a business gets deeper and deeper into tax debts, the practice is sometimes referred to as pyramiding.

If a company is making minimal payments of tax debts, the IRS may try to induce voluntary compliance. In some cases, the Justice Department will seek an injunction to require timely deposits and payments of all withheld employment taxes and to timely file all employment tax returns. Whatever your situation, try to steer clear of these issues. Get help early.

For that matter, if you can, stay ahead of payroll taxes. Consider using a payroll service that doesn't allow you the choice whether to use the payroll tax money for something else.

Contact 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.