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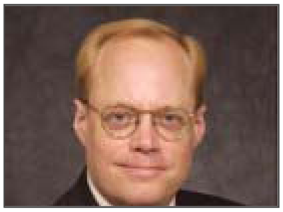

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THE TAX LAWYER

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With Taxes "Responsible" Means Holding The Bag

Are you a responsible person? Your first reaction is to answer, "Yes, of course!" But in the tax world, don't answer too quickly. When it comes to taxes, "responsible person" is a term of art. Although being labeled responsible isn't terrible, it certainly isn't good either.

A responsible person is someone with the authority over—and liability for—payroll taxes. We all know that income and employment taxes must be withheld from wages and paid over to the IRS. This withheld tax money belongs to the IRS. These withheld taxes are "trust fund" taxes. When trust fund taxes don't show up, the IRS will pursue the business to collect. The IRS can padlock the business to stop the payroll tax bleeding.

If the employer uses the trust fund monies to pay vendors, rent or utility bills to keep the lights on, someone has to pay. Thousands of businesses fall into this trap every year. Personal liability for owners and managers is a potent IRS weapon. The IRS can assess a Trust Fund Recovery Assessment, also known as a 100-percent penalty, against each and every "responsible person." See Section 6672(a).

The IRS position is that every officer is responsible and non-officers with signature authority are too. If there are six officers, the IRS can simultaneously try to collect the tax plus 600 percent from the officers! See What Is The Trust Fund Recovery Penalty? You can be liable whether you consciously pay someone else ahead of the IRS or even if have no knowledge the IRS is not being paid!

These IRS trust fund liability cases are serious, and the IRS likes to make examples of businesses that fall behind on payroll taxes. Typically, the IRS comes after the business first, but if there's any doubt about collecting quickly from the business itself, the IRS will go after responsible persons too. Most such cases get resolved, and someone usually pays. But occasionally a putative responsible person goes to court claiming innocence.

I Was Duped! Recently, a court refused to take sympathy on a company owner who claimed he was duped by his bookkeeper. In *Colosimo v. U.S.*, the Eighth Circuit Court of Appeals ruled for the IRS, despite the owner's assertions. Colosimo, his wife and son ran an Iowa distribution business.

Colosimo received IRS notices that the company failed to file payroll tax returns and gave them to his accountant. The accountant initially advised it was a mixup, but later told Colosimo to pay. He didn't and the company went downhill and eventually closed. The IRS tried to collect from all of them, including the accountant.

Colosimo's big defense—or so he thought—was that it was all the accountant's fault, and that he had no intent not to pay. The IRS, the district court and the Eighth Circuit Court of Appeals all ruled that Colosimo was personally responsible. Mrs. Colosimo, however, was ruled not to be a responsible person.

Mr. Colosimo was president and treasurer of the company and a 50% shareholder. He had check signing authority, decided which creditors to pay, and had the authority to hire and fire employees. Plus, his actions in not paying were "willful." He may have had no evil motive, but his actions were voluntary, conscious, and intentional. That made him subject to penalties.

For more, see:

Internal Revenue Bulletin 2005-24

[Beware Personal Liability For Employee Taxes]

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