

# Employer not liable for failing to file W-2s/W-3

An employer that failed to prove it filed its Forms W-2/W-3 with the Social Security Administration (SSA) was, nevertheless, not liable for a tax penalty for intentionally disregarding the filing requirement. This may be a comfort if you're filing paper W-2s/W-3, which are due to the SSA by the end of this month. (*Hom & Associates, Inc. v. Commissioner*, T.C. Summ. Op. 015-49, U.S. Tax Court, 2015)

**An honest mistake.** For 2004 and 2006, an employer issued W-2s to employees but failed to file those forms with the SSA. The president of the company said that he generally followed the same procedure every year—after mailing the forms to the SSA, he saved copies on his computer. Since he followed the same procedure every year, he thought the forms had been filed.

The IRS assessed a penalty for intentionally disregarding the requirement to file W-2s. The employer conceded the forms weren't filed but disputed the penalty. The Tax Court agreed and ruled in the employer's favor. Tax Court: A penalty for intentionally disregarding a filing requirement applies when the failure wasn't accidental, unconscious or inadvertent.

Here, the court said, the president testified convincingly that he believed the forms had been filed. The court also noted that the IRS never prompted the employer to correct its failure. Finally, the court said that the employer didn't have a pattern or practice of not filing.

## Credibility is everything

It's important to establish a reputation of compliance with the IRS and the SSA. This employer did, so even though it may still be on the hook for penalties for failing to file its W-2s, it doesn't have to pay the more onerous penalty for intentionally disregarding the filing requirement.

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