BusinessManagement DAILY

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Tax day reminder: Deposit your payroll taxes!

Company executives who are responsible persons may be on the hook for 100% of their company's undeposited payroll taxes. That's bad enough. But there are worse fates out there for execs and companies that don't take their payroll tax liabilities as seriously as the IRS does. Two recent cases are illustrative.

Case No. 1: Burn this! A company that operated a fire-retardant business and its owner were repeat offenders. They failed to deposit payroll taxes for five years, failed to pay FUTA taxes for four years, failed to file Forms 941 and 940, ignored liens and levies and didn't pay civil penalties. The tab: $3.5 million.

After the liens, levies and civil penalties didn't coax the company and its owner back into compliance, the IRS sued, asking a federal trial court to issue a permanent injunction against the company and the owner. The court obliged. Court: The company doesn't intend to become compliant with its payroll tax obligations in the future. Issuing an injunction, therefore, is necessary and appropriate to enforce the tax code. The injunction requires the company to withhold, deposit and report its payroll tax liabilities. (U.S. v. Chesapeake Firestop Products, Inc., et al., No. 8:17-cv-03256, D.C. Md., 2018)

Case No. 2: Failure to heed an injunction = possible receivership. A company that failed to deposit $291,503 in payroll taxes and file returns landed on the IRS' radar in 2012. In 2013, the company and its owners agreed to an injunction that required them to pay $1,000 monthly toward the arrearage, timely deposit withheld income and FICA taxes and file monthly affidavits with a revenue officer attesting that the terms of the injunction had been met.

In 2017, the company was again defaulting on its payroll deposits and it missed 47 of the $1,000 payments toward the arrears. The IRS had enough. It asked a federal trial court to hold the owners in contempt for failing to honor the injunction. As a remedy for the contempt, the IRS wanted the court to appoint a limited receiver to ensure the company met its payroll obligations. The court agreed and gave the company and its owners a month to get their financial affairs in order or else a receiver would do it for them. (U.S. v. JK Peris, et al., No. 6:12-cv-06628, D.C. W. N.Y., 2018)

GUESS WHO'S WATCHING: There are worse remedies than having a limited receiver appointed—the IRS wanted to throw either of the owners into prison for violating the injunction.

Upshot: Unless you want the IRS looking over your shoulder every day or you're comfortable with losing control of the company's money, you will tell your executives that fulfilling the company's payroll responsibilities is mandatory.

Need some last-minute tax day motivation? Here's a list of famous tax evaders to serve as cautionary tales.

Al Capone. The violent gangster was finally indicted on tax evasion, because no other charge thrown at him would stick. In this case, well, whatever works.

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Martha Stewart. Martha thought she shouldn't have to pay taxes on her Hamptons property because she "didn't spend much time there."

Abbott & Costello. The legendary comedy duo were nabbed by the IRS in 1956 and forced to sell off their possessions, including, sadly, their film rights.

Studio 54. The famously bacchanalian nightclub shuttered when its owners were caught cooking the books. It was only open for 33 months.

Leona Helmsley. This indictment from the 80s gave us a great *let them eat cake*-esque quote from the powerful hotelier: "We don't pay taxes. Only the little people pay taxes."

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