



**Wood** LLP

# Tax Alert



## **Robert W. Wood**

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## Shocking Report Says Nonprofits Owe \$875 Million In Taxes To IRS

As the IRS email scandal shows, people care about who is exempt from taxes. Tax exemption is big business at the IRS and a key part of our tax code. But even tax-exempt organizations have to withhold on employee salaries and pay payroll taxes just like anybody else. Or do they?

Everyone in business knows the IRS comes down hard if you don't send in your payroll tax money. Yet it turns out tax-exempt organizations owe almost \$1 billion in unpaid payroll tax. So says the [Treasury Inspector General for Tax Administration](#) in this report: [Some Tax-Exempt Organizations Have Substantial Delinquent Payroll Taxes](#).

More than 64,200 tax exempt organizations owed \$875 million as of June 16, 2012. About 1,200 of them owed more than \$100,000 each, and 9 owed taxes for 10 years totaling over \$5.5 million. See [TIGTA: Tax Exempt Tax Deadbeats — Nonprofit Groups Owe the IRS Nearly \\$1 Billion in Payroll Taxes](#). The IRS may be shorthanded, but something's wrong.



There's personal liability too, with nonprofits just like other taxpayers. That's right, 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. IRS can assess a [Trust Fund Recovery Assessment](#), also known as a 100% penalty, against every responsible person under [Section 6672](#) of the tax code.

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. You can be liable even if have [no knowledge](#) the IRS is not being paid.

[Willfulness](#) is not hard to satisfy either. The courts ask if you have knowledge that payroll taxes are unpaid or if you showed reckless disregard to whether they were. The IRS takes [payroll tax](#) liabilities seriously—especially against signatories holding the bag when the business can't pay.

And nonprofit officers and directors can be tagged, as they were in [Schiffman v. United States](#). So how come some nonprofits owe so much, especially when officers and directors could be hit up for the money? It's not one thing, but the tax exemption people aren't collectors, the report says. Different parts of the IRS are responsible.

The IRS statute of limitations on collection is normally 10 years, but even longer is possible. In [Beeler v. Commissioner](#), the Tax Court held Mr. Beeler responsible for 30 year-old payroll tax penalties.

Don't sign checks and tax returns and expect to skate if the IRS comes along. In [Davis v. United States](#), the courts turned a deaf ear and let stand a whopping \$11 million in IRS penalties. Hiring a good payroll service can help so the business—or nonprofit organization—won't have any discretion. You don't want to go on the board of a nonprofit only to end up footing the bill for the organization's tax problems.

Even an unpaid volunteer can get stuck. In [United States v. Cuda and Dankis](#), Anthony Cuda was liable even though the office manager embezzled the money and stopped paying the IRS. Since Mr. Cuda had authority to sign checks, that was that.

The court said it didn't need to assign comparative fault. Each responsible person was 100% liable. Mr. Cuda was in court, so he had to pay.

So why is nearly \$1 billion in payroll tax owed by nonprofits? Maybe we should ask Lois Lerner to testify about this...

*Contact me at [Wood@WoodLLP.com](mailto: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.*