



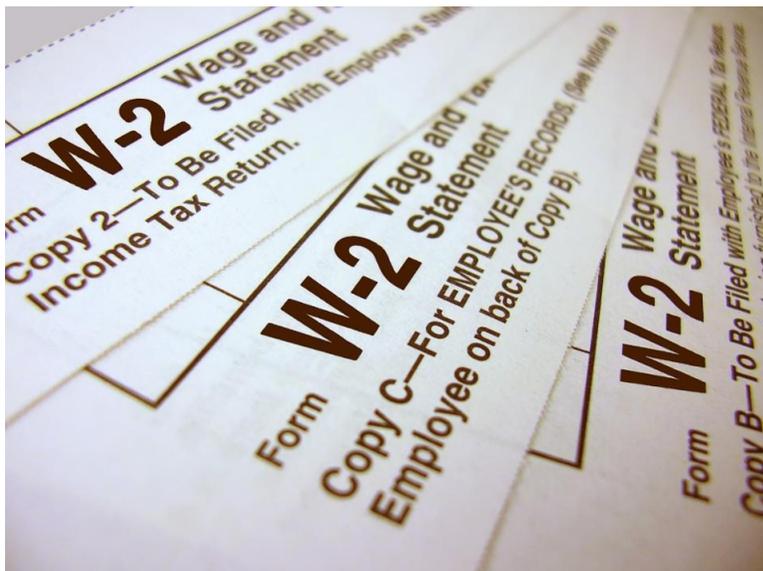
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THE TAX LAWYER

TAXES 7/25/2017

5 Year Prison Terms Over Payroll Taxes Warn Employers About IRS

The IRS can be tough on collecting income taxes, and even tougher where payroll taxes are concerned. The money is withheld from employee wages, and is supposed to be paid over to the IRS. If the IRS doesn't get it, the losses can mount quickly. Payroll taxes are withheld from wages and are to be promptly paid to the government. This is trust fund money that belongs to the government, and no matter how good a reason the employer has for using the money for something else, the IRS is strict. The IRS can target the owners of the business, plus check signers and other responsible persons who had a role--or could have



had a role--in the failures to pay. Sometimes, the IRS even goes after third parties, even criminally. If convicted, the sentence can often be five years in prison.

For example, a [former bank vice president has pleaded guilty](#) to conspiring to defraud the United States. According to documents filed with the court, Douglas Corriher, 68, was Vice

President of a South Carolina-based bank. From 2009 through 2010, Corriher extended several factoring loans, through nominee entities, to a bank customer who operated staffing companies in North Carolina. Through the use of nominees, Corriher was able to circumvent federal regulations limiting the amount of money that can be loaned to a single entity.

The staffing company promised its clients that it would pay the payroll taxes for thousands of low-wage temporary workers it supplied to its clients. The company issued IRS [Forms W-2](#), and filed employment tax returns *showing* that the funds had been withheld from the wages of the workers. In fact, though, the payroll taxes were not paid over to the IRS. Corriher was aware that the company owed more than \$1 million in payroll taxes. Even so, Corriher continued to make advances on the loans. He knew the fund of unpaid payroll taxes would enable the staffing company to repay the loan, thus allowing the bank to continue collecting high rates of interest on the loan advances, plus earning lucrative fees.

Corriher's sentencing hearing is scheduled for Oct. 6. He faces a statutory maximum sentence of five years in prison, as well as a period of supervised release, restitution and monetary penalties. Most payroll tax cases don't end up as criminal ones, but many have at least the potential for criminal liability. Of course, even civil liability is nothing to trifle with. The IRS tends to push hard, especially when payroll tax failures reflect a pattern. The IRS can close a business, and sometimes even take court action to make it doubly clear that the IRS does not want a repeat performance.

Any failure to pay—even late payment—is serious, regardless of how or why the employer or its principals use the tax money for something else. Using the money to pay suppliers and keep the business open isn't a good reason in the IRS view. Payroll services are one common answer, so the employer doesn't have discretion to use the money to pay vendors or for anything else. But what if the payroll service takes the money? That horrific possibility features prominently in a [report](#) from the Treasury Inspector General.

So be careful who you hire too. When a tax shortfall occurs, 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.

If you are 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 persons, 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.

For alerts to future tax articles, email me at Wood@WoodLLP.com. This discussion is not legal advice.