



Wood LLP
ATTORNEYS AT LAW

Tax Alert



Robert W. Wood

THE TAX LAWYER

TAXES 6/02/2015

Convicted Of Tax Evasion, Poker Chip CEO Faced 10 Years, Got 10 Months

The CEO of a Maine poker chip manufacturer was found guilty of tax evasion for paying employees under the table and evading payroll taxes. John M. Kendall was convicted on three felony counts of theft by misapplication of withholding taxes, one felony count of conspiracy to commit tax evasion, three misdemeanor counts of failure to account for or pay over withholding tax, and one misdemeanor count of making a false statement on a state income tax return. When sentenced, he faced up to 10 years.

But at sentencing, he was ordered to serve only 10 months in jail. the bulk of his 3 1/2 year sentence was suspended. Mr. Kendall plans to appeal his conviction and his sentenced has been stayed while the appeal is pending. He was the [president of the now shuttered Chipco International](#). While he ran it, Mr. Kendall diverted funds withheld from employees. Some went to pay business expenses, some went for his own mortgage, legal fees and even personal dues and expenses at two country clubs. Six of the off the books employees pleaded guilty, which didn't help the CEO's chances at trial.



The off book employees were encouraged to apply for unemployment benefits while working, a kind of double dip with cash off the books. This was a Maine state case, but the IRS is equally if not more serious about employment taxes. In fact, employment taxes are arguably the most serious, since much of it is trust fund money withheld from employees.

Business owners and other [responsible persons](#) have personal liability, and excuses are rarely accepted. In [Colosimo v. U.S.](#), the court refused to take sympathy on a company owner who claimed he was duped by his bookkeeper. In [Jenkins v. U.S.](#), the CEO of a publishing company didn't exercise day-to-day control, but knew payroll taxes were unpaid and was held responsible.

In fact, you can be liable even if have no knowledge that taxes are not being paid. No matter what your excuse, getting out of paying can be tough. In [Oppliger v. U.S.](#), the court held business owners liable and subject to a \$2 million penalty even though it was really an [embezzling accountant](#) that did the dirty work and then died!

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% penalty, against every responsible person. 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. When multiple owners and signatories all face tax bills they generally squabble and do their best to sic the IRS on someone else. One responsible person may get stuck while another who is even more guilty may get off scot-free.

Meanwhile, the government will still try to collect from the company that withheld on the wages. The IRS also wants to make sure this kind of bad tax situation doesn't occur again. The government can move to shut down the business so the situation doesn't get worse. In extreme cases the government may seek criminal penalties.

For alerts to future tax articles, follow me on Forbes. You can reach me at 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.