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THE TAX LAWYER

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Don't Be A "Predecessor Employer"

If you're in business, paying [employment taxes](#) is inevitable, but make sure they're your **own** taxes, not someone else's. It matters for the dollars at stake, but also impacts your procedural recourse with the IRS. The IRS addresses it in a [Program Manager's Tax Advice](#).



You never want to become [delinquent](#) in paying taxes, **especially** employment taxes. The IRS takes them very seriously and moves to collect them. One such action is to levy on your bank accounts.

But before a levy can be issued the IRS must provide notice and an opportunity for an administrative [Collection Due Process hearing](#). A Collection Due Process hearing is only available for certain serious IRS collection notices. Among other things, it allows you the opportunity to ask for an installment agreement, an offer in compromise or another collection alternative.

However, this procedural safeguard won't apply if you are a **"predecessor employer."** Here's what the IRS evaluates to determine if one business is a "predecessor" of another:

- Does it have substantially the same owners and officers?
- Are the same individuals actively involved in running the business, regardless of whether they are officially listed as the

owners/shareholders/officers?

- If the taxpayer's owners or shareholders are different, is there evidence they acquired the business in an arm's-length transaction for fair market value?
- Does the business provide substantially the same products, services, or functions as the prior business?
- Does the business have substantially the same customers as the prior business?
- Does the business have substantially the same assets as the prior business?
- Does the business have the same location/telephone number/fax number, etc. as the prior business? See [IRC Section 6330\(h\)](#).

A business won't be treated as a predecessor if there was a genuine change in control and ownership, as where the business was acquired in an arm's-length transaction for fair market value, where the previous owners have ceased all involvement.

The IRS's guidance lists examples of predecessor status and explains how to determine if a business requesting a Collection Due Process hearing for employment taxes is a "predecessor." There's no right to a Collection Due Process hearing to resolve the employment tax liabilities if you already had your chance.

For more, see:

[Received An IRS Notice? 10 Simple Tips](#)

[Collection Due Process FAQs](#)

[Taxpayer Advocate Service: Tax Collection And Payment Alternatives](#)

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