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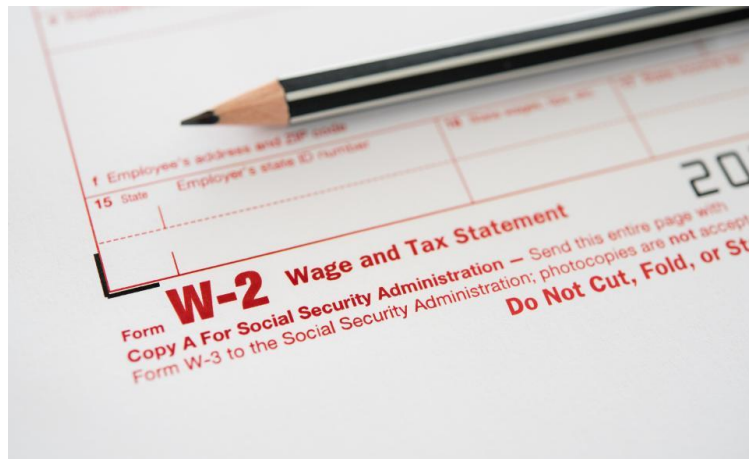
THE TAX LAWYER

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Even If Your Payroll Firm Steals Your Employment Taxes, You Must Pay IRS

Criminal payroll tax cases keep on coming. A disbarred attorney who owned a Pennsylvania payroll company has been sentenced to 8 years in prison, plus ordered to pay nearly \$5.3 million to the IRS. Robert McAndrew, Jr. pleaded guilty to tax crimes involving his defunct payroll company. Although he was sentenced to 8 years in federal prison after he pleaded guilty, he could have faced prison for much longer. In fact, he could have faced over 100 years of prison in all, given the 21 counts of tax evasion he was facing.

His company was called NEPA Payroll Services. Both taxpayers and the IRS alike were defrauded. In fact, the withhold tax money was never sent to the IRS.



Moreover, the victims were still on the hook for their tax debts, plus penalties and interest. When McAndrew was sentenced, the judge set his repayment schedule initially at \$25 per quarter, followed by \$150 a month to begin during three years' supervised release following his incarceration. Is it likely much of the \$5.3 million will actually be paid back? The answer is obvious.

With more than \$5 million owed, it is highly unlikely that McAndrew will ever put a dent in the monies he owes. The [IRS is being urged to prosecute more payroll tax violations](#). After all, the trust fund money belongs to the government, and any failure to pay is serious. Payroll services are one common answer, so the employer does not have discretion to use the money to pay vendors, or for anything else. But what if the *payroll service itself* takes the money? That horrific possibility featured prominently in a [report](#) from the Treasury Inspector General.

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're 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. When multiple owners and signatories all face tax bills, they generally do their best to direct the IRS to someone else. Factual nuances matter in this kind of mud-wrestling, but so do legal maneuvering and just plain savvy. One responsible person may get stuck, while another may pay nothing. 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 shut down the business, or in extreme cases, may seek criminal penalties. More commonly, the government can [seek an injunction](#) to stop the bleeding so the government gets its tax money. Where a business gets deeper and deeper into tax debts, the practice is sometimes referred to as [pyramiding](#). If a company is making minimal payments of tax debts, the IRS may try to induce voluntary compliance. In some cases, the Justice Department will seek an injunction to require timely deposits and payments of all withheld employment taxes and to timely file all employment tax returns. Whatever your situation, try to steer clear of these issues. Get help early. Stay ahead of payroll taxes. Consider using a payroll service that doesn't allow you the choice whether to use the payroll tax money for something else. But when you select a payroll service, check them out, and make your selection carefully.

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