



Robert W. Wood

THE TAX LAWYER

Mar. 12 2012 – 11:45 pm

Failing To Pay Employment Taxes Means Personal Liability

Employers have a duty to withhold taxes from employees. That's one reason the IRS likes employees better than independent contractors. See [IRS, DOL And States Mount Independent Contractor Attack](#). The IRS gets its tax money sooner and more reliably by withholding, causing some people to believe that someday **everyone** will be an employee.



If the employer withholds the tax money but doesn't hand it over to the IRS, it means big penalties. See [Don't Cross IRS On Payroll Taxes](#). It also means personal liability even if you didn't benefit from the money. See [Officers Of Nonprofits Face Personal Liabilities For Taxes](#). The IRS rarely accepts excuses. See [9/11 Excuse Not Enough To Escape IRS Tax Bill](#).

In a cash-strapped business, you might think there are more important obligations, but taxes should be at the top of your list. See [IRS Pursues Payroll Tax Pyramiding](#). When you withhold tax money but fail to give it to the IRS, they will come after you. Quite rightly, the IRS views it as government money, a [trust fund](#) belonging to the IRS.

The IRS takes a tough stance and the courts usually go along. A recent example is [Kobus v. U.S.](#), where the U.S. Court of Federal Claims agreed

Kobus was a “responsible person” personally liable when payroll taxes went missing. Kobus claimed he wasn’t willful, saying he didn’t **know** taxes weren’t paid and the corporation had no funds.

Kobus owned Village Turf, a landscaping business that expanded into a retail store. Kobus hired others to handle details such as payroll taxes. By the time of the retail expansion he hired a manager to run the business. Escalating tax-collection activities lead Kobus to ask the manager to investigate. Kobus claimed the manager was to handle all taxes but the manager denied it.

Claiming he was innocent of wrongdoing, Kobus said he had no knowledge taxes weren’t being paid. The IRS said even if that was true, Kobus was reckless. Since Village Turf was paying creditors, it could have paid the IRS. The court agreed Kobus was willful.

The court acknowledged that Kobus may not have had the money on hand to pay the taxes. After all, vendors held security interests requiring first payment. Nevertheless, Kobus should have found a way to pay the IRS. Besides, the court didn’t believe Kobus was so “oblivious” that he didn’t know large payroll taxes weren’t being paid.

For more, see:

[IRS Penalties Despite Dead/Embezzling Accountant!](#)

[Employers Who Violate Tax Law May Go To Jail](#)

[IRS Nightmare: What Employment Taxes?](#)

[Personal Tax Liability When A Business Goes Under](#)

[Supreme Court Deaf To Payroll Tax Woes](#)

[IRS Pursues Payroll Tax Pyramiding](#)

*Robert W. Wood practices law with [Wood LLP](#), in San Francisco. The author of more than 30 books, including *Taxation of Damage Awards & Settlement Payments* (4th Ed. 2009 with 2012 Supplement, [Tax Institute](#)), he can be reached 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.*