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IRS Payroll Taxes Can Close A Business, Mean Personal Liability, Even Jail

Income taxes are important, but payroll taxes can be even more so. Every employer must withhold taxes from employee paychecks, sending the money to the IRS. The IRS calls this trust fund money, so if an employer fails to hand it over to the IRS, it is like theft. The IRS tends to push hard in such situations, 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.

A recent case in point involved Dr. James Hood, a Spokane dentist, and his wife, Karen Hood. They were held [in contempt](#) for violating the court's [previous permanent injunction](#) requiring them to [timely file payroll tax returns and pay payroll taxes](#). In fact, the court ordered the Hoods to [close their dental care businesses](#), cease operating as employers, and barred them from opening *any new* businesses where the Hoods would serve as employers. The court found a consistent pattern of incomplete employment tax compliance, dishonored payments, and missed deadlines. The court had previously [entered](#) a permanent injunction requiring the Hoods and their entities to comply with federal employment tax laws.



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Another example of the seriousness of payroll taxes? How about jail. One of the bigger messes involved a big Hollywood payroll service company called Axium International, which failed in 2008. Prosecutors went after its former CEO, John Visconti. Now 74 years old, the Beverly Hills man was recently sentenced to two years in federal prison. He was also ordered to pay \$1.75 million in restitution to the IRS. Last October, he was convicted of tax evasion, conspiracy to defraud the IRS, and filing a false tax return.

Axium's gross revenues were over \$1 billion per year, but the company collapsed in 2008 when its tax delinquencies exceeded an astounding \$100 million. The IRS does not like to let payroll tax problems snowball, so they normally are harsh early, to prevent the tax liabilities from getting worse. In this case, though, Mr. Visconti and Axium's former chief operating officer, Ronald Garber, age 62, of Santa Monica, California, used a number of mechanisms to divert money into their pockets.

Prosecutors showed Visconti living a lavish lifestyle at the expense of the IRS. Visconti diverted tax refund checks payable to Axium and its subsidiaries into secret bank accounts that he and Garber controlled. These funds were not shown on corporate books and records. Garber and Visconti also diverted approximately \$570,000 from Axium by paying invoices submitted by a sham construction company they controlled. Visconti reported none of the funds he pocketed on his personal federal income tax returns.

Visconti was not the only one to end up in criminal tax trouble. Garber previously pleaded guilty to two counts of subscribing to a false tax return. He is scheduled to be sentenced later this year. Another former Axium employee was Christina Futak, 60, of Orange. She pleaded guilty to tax evasion and was sentenced to three years of probation.

If you are in business, it can be tempting to figure that you have to keep the rent paid and supplies ordered, and that the IRS won't miss the payroll tax money if you just divert it temporarily. But, no matter how good the reason, the practice is downright dangerous. It is one reason that in cases where the IRS catches the problem early, the IRS will encourage use of a payroll service. If the payroll service *automatically* takes out and remits all the payroll taxes, the business won't have the discretion to divert the money, even briefly.

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