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Man Could Face 5 Years For \$18M IRS Employment Tax Violation

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Payroll tax violations can be serious, especially big ones. A Houston, Texas business owner has [pleaded guilty](#) to one count of failing to pay over employment taxes. But the dollar amount of the violation was Texas-sized. According to documents filed with the court, Richard Floyd Tatum Jr., 57, owned Associated Marine & Industrial Staffing Inc. (AMI), an industrial staffing company that provided temporary labor to businesses in Texas and other states. Tatum employed approximately 1,000 people to include internal employees, who worked for AMI, and external employees, who AMI assigned to work on-site at client locations.

Tatum was responsible for collecting, accounting for and paying over to the IRS the payroll taxes withheld from AMI's employees' wages. Tatum exercised significant control over AMI's finances to include entering into contracts, signing checks, to include payroll, and deciding which creditors to pay. Tatum also signed and filed AMI's employment tax returns. But not everything went smoothly.



From March 2008 through December 2009, Tatum filed false and untimely employment tax returns for AMI that did not report AMI's external employees. In May 2013, Tatum filed untimely returns for the quarters ending in March 2010 through December 2012, reporting AMI's external employees but failing to make any payments. Tatum withheld approximately \$12 million in payroll taxes from March 2008 through December 2012, which he did not pay over to the IRS. Tatum also failed to pay \$6 million of AMI's contributing share of Social Security

and Medicare taxes during the same quarters.

Instead, he used the money for his personal benefit, including making payments on his ranch and traveling to Las Vegas, Hawaii and France. Tatum admitted that he caused a tax loss of more than \$18 million.

Sentencing is scheduled for June 1. Tatum faces a statutory maximum sentence of five years in prison, a period of supervised release, restitution and monetary penalties. "Failure to pay over employment taxes taken from employee wages is a serious criminal offense," said Chief Richard Weber of IRS Criminal Investigation. "It not only harms the employees' future social security and Medicare benefits, it's stealing from honest taxpayers and the U.S. Treasury. IRS Criminal Investigation will continue to track down those who collect these taxes and use the funds for personal gain."

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.

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.