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When Payroll Tax Cases Go Criminal



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You might be surprised at how seriously the IRS takes employment taxes. There's good reason, since much of this is actually the IRS's money held in trust. That makes a failure to pay employment taxes even more serious than a failure to pay income taxes.

One recent reminder of this phenomenon was the guilty plea by a Queens, New York CPA. Silford Warren [plead guilty](#) to failing to pay over employment taxes for his small accounting firm. According to his plea agreement, he under-reported employee salaries to the IRS from 2006 through 2008. He also did not collect, truthfully account for, and pay over employment taxes of approximately \$108,000.

Mr. Warren's plea agreement requires him to pay \$184,263 of restitution to the IRS relating to payroll taxes and income taxes. (He also filed false corporate income tax returns for 2005 through 2008.) Warren faces a potential maximum sentence of five years in prison and a fine of up to \$250,000.

Caution: Be *especially* careful with payroll taxes. If you misstep, proving you have reasonable cause can be tough. In [Oppliger v. U.S.](#), the U.S. Court of Appeals for the Eighth Circuit ruled for the IRS, finding business owners to be liable and subject to a \$2 million penalty even though an accountant embezzled the money and then died! See [IRS](#)

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

The IRS wants to make sure this kind of bad tax situation doesn't reoccur and in extreme cases may seek criminal penalties. See [Employers Who Violate Tax Law May Go To Jail](#). More commonly, the government may seek to enjoin bad behavior, as by [seeking an injunction](#) against a company and its owners.

Personal Liability. Business owners and other “[responsible persons](#)” have personal liability and excuses are rarely accepted. In [Colosimo v. U.S.](#), the Eighth Circuit Court of Appeals refused to take sympathy on a company owner who claimed he was duped by his bookkeeper. In [Jenkins v. U.S.](#), the majority owner and CEO of a publishing company was ruled responsible for payroll taxes. Although he didn't exercise day-to-day control, he had the authority to do so and he knew payroll taxes were unpaid. You can be liable even if have **no knowledge** the IRS is not being paid. See [What Is The Trust Fund Recovery Penalty?](#)

For more, see:

[9/11 Excuse Not Enough To Escape IRS Tax Bill](#)

[Officers Of Nonprofits Face Personal Liabilities For Taxes](#)

[Don't Send Money For Worker Status Amnesty!](#)

[Fail To Pay Payroll Tax: Go To Jail](#)

[California's Tough New Independent Contractor Law](#)

[Don't Cross IRS On Payroll Taxes](#)

[Don't Fail To Consider Taxes When Settling Litigation](#)

[IRS Pursues Payroll Tax Pyramiding](#)

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