

Payroll taxes and the Internal Revenue Service (IRS)

2 March 2010

Business owners who are behind on paying their payroll taxes may find themselves in a big mess. The IRS requires employers to withhold money from their employees' paychecks that those employees owe or will owe the government in the future. Federal law requires employers to hold these funds in "trust for the United States." 26 U.S.C. § 7501(a) (West 2011). Should employers fail to pay these trust fund taxes, the government is able to collect the amount due from the officers of the company who are responsible for their collection and payment. In other words, these officers may become personally liable for the unpaid trust fund taxes of the corporation.

An employer may also fall behind on its ordinary corporate income tax or other "non-trust fund" taxes. These taxes are not collectable from individuals, but only from the corporation.

Often when a business owner owes trust fund taxes, their business likely owes ordinary corporate taxes as well. In this case, there may be something the business owner can do to limit his personal liability. IRS policy has long permitted a taxpayer that "voluntarily" submits payment to the IRS to allocate where they would like the payment to go—i.e. to the ordinary corporate income tax debts or to the "trust fund" debt. *In re Energy Resources Co., Inc.*, 871 F.2d 223 (1st Cir. 1989). So an easy way to limit personal liability is to designate any future payment to the IRS specifically for the trust fund taxes. If you don't, the IRS will choose how it wants to apply the payment.

In closing, it is always best to make your tax payments on time, however, if you do get behind, consider writing directions on your checks to allocate payment to the trust fund portion of your tax debt. However, if a company is facing this issue, it probably needs legal counsel. Feel free to give this office a call.

Contact: George E. Bourguignon, Jr., Esq.

Phone: (413) 746-8008

Website: www.bourguignonlaw.com

Email: gbourguignon@bourguignonlaw.com