

Headliner Volume 179

September 11, 2006

Most citizens voluntarily file and pay their taxes, but are shortchanged by those who don't pay their fair share. One category the IRS considers a priority is unpaid employment taxes. Unfortunately some businesses engage in "pyramiding", which involves repeatedly withholding trust fund taxes from employees but intentionally failing to remit them to the IRS. Employment taxes are often referred to as 'trust fund' taxes because employers hold the employee's money in trust until they deposit it with the government.

For some, it may be an attempt to use the government as a bank to 'borrow the money for a short while' with the intention of paying it back later. For others, the business may be experiencing financial difficulties and elects to keep the withheld funds to pay operating expenses. For a small number, it involves philosophical differences with the tax law of the United States that courts have consistently rejected.

Regardless of the reason a business has for not paying, federal law requires that employment taxes be paid to the government on time. Failure to do so may subject a business to the assessment of penalties and interest, and collection actions such as filing a Notice of Federal Tax Lien, issuance of a Notice of Levy to its bank or receivables, or seizure of assets.

To encourage prompt payment of withheld income and employment taxes, including social security taxes, railroad retirement taxes, and collected excise taxes, the law provides for the assessment of a [Trust Fund Recovery Penalty](#). The penalty is assessed against persons who were responsible for the payment of trust fund taxes but willfully failed to pay them. The penalty is equal to the amount of withheld tax.

The IRS encourages employers to use the Electronic Federal Tax Payment System (EFTPS) to make tax deposits. EFTPS is secure, accurate, easy to use, and provides an immediate confirmation for each transaction. For more information, employers can enroll online at the [EFTPS Web site](#), or call 1-800-555-4477 for an enrollment form.

When employers repeatedly fail to pay trust fund taxes, known as "pyramiding", there are a number of stricter enforcement actions the IRS may consider, including:

- Requiring monthly filing of tax returns instead of quarterly.
- Requiring deposits of withheld taxes into a special bank account within 2 banking days of paying employees.
- Referring information about the employer to the Department of Justice for criminal enforcement of ongoing non-compliant tax behavior, which could result in criminal penalties such as a fine of up to \$100,000 and up to one year in jail upon conviction.
- Referring information about the employer to the Department of Justice for civil enforcement, which allows for a court-ordered injunction to prevent a business

from continuing payroll abuses.

There have also been recent prosecutions of individuals and companies who have, acting under the guise of a service provider, stolen funds intended for payment of employment taxes.