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## **RESPONSIBLE PERSONS AND WILLFULNESS**

The government bears the burden of proving that an individual was a “responsible” person who willfully failed to collect, account for, and pay employment taxes. The IRS will assess the penalty against every person it deems “responsible”, and seek to recover the amounts due, jointly and severally, from those persons. Once the IRS determines who are responsible, the burden shifts to the individuals to prove that they did not willfully fail to collect, account for, and pay the employment taxes. Civil and criminal penalties may also apply.

Courts have broadly interpreted the term “responsible person” to include those with the ultimate authority of selection and timing of creditor payments, control of the decision-making process regarding creditor payments, and authority over the financial affairs of the corporation. The existence of “significant control” over the disbursement of funds is sufficient, and under certain circumstances, lenders and employees of lenders have been held “responsible”.

The term “willfulness” has been defined as a “voluntary, conscious, and intentional decision to prefer other creditors to the United States.” Neither a bad motive nor a specific intent to defraud the government is a necessary element; knowledge of the duty has been held to satisfy the willfulness requirement. Although at least one U.S. Circuit Court of Appeal (the 10<sup>th</sup>) has recognized a “reasonable cause” defense, no taxpayer has yet prevailed with it in that Circuit.

The I.R.S will attempt to collect the taxes from responsible persons if the tax liability is not satisfied by the business. Further, the I.R.S. is not always required to attempt collection from the business before assessing a responsible person because the trust fund penalty is separate and distinct from the tax liability of the business.

## **David A. Spreceace, P.C.**

We can help you establish reasonable payment terms with the I.R.S., while you concentrate on increasing revenues. In some cases, we can help you establish another business. We can always help you stay in compliance with federal tax laws and regulations, which is the best way to exist harmoniously with the I.R.S.

If you think you may become a target for the Trust Fund Recovery Penalty, call us as soon as possible. The sooner we become involved, the better off you will be.

**For more information about this topic or other business-related issues, please call TOLL FREE, 866-607-8260.**

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