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100% Payroll Tax Penalty

As you're well aware, employers are required to deduct federal income tax and social security taxes from their employees' paychecks and remit these taxes (known as trust fund taxes) to the government on a timely basis. Most employers deposit these taxes monthly, while larger employers must make tax deposits on a more frequent basis.

In this tough economy where cash flow can easily become a problem and trade creditors may start getting pushy in a hurry, it can be tempting to be a little late on making payroll tax deposits. Although this will generate penalties when the payroll tax return is filed, late deposits can buy a business a little extra time for cash flow to improve without the government immediately trying to take any collection action. Thus, shorting or delaying payroll tax deposits can look like a tempting option when a business needs extra cash. The problem, however, is what can happen next.

If the cash flow problems continue and the business is never able to catch up on its payroll tax deposits, the law allows the IRS to go after anyone who was responsible for making sure the tax deposits were made. These individuals, known as responsible persons, are potentially personally liable for a penalty equal to 100% of the undeposited taxes. (A responsible person may be an officer or an employee of a corporation, a partner or an employee of a partnership, a corporate director or shareholder, or any other person or entity.)

One of the commonly held beliefs about status as a responsible person is that an individual must have check signing authority before he or she can be held liable for failing to deposit the trust fund taxes. A recent case from the 10th Circuit Court of Appeals reminds us this isn't so. Depending on the facts and circumstances, individuals can be hit with the 100% penalty even if they had no authority to sign checks.

The point of our bringing up this case is that while we hope your business never runs into cash flow problems, if it does, one of the first creditors you want to make sure gets paid is Uncle Sam. Having the government go after you personally for unpaid payroll tax deposits is something you do not want to happen.

If you questions about this issue, including what to do if you currently are already behind on your payroll tax deposits, please feel free to call me.

Very Truly Yours,

Krebs & Co., CPA's, Inc.
dba **Krebs Advisory Group**