Department of the Treasury
Internal Revenue Service

Notice 784

(Rev. June 2016)

Could You be Personally Liable for Certain Unpaid Federal Taxes?

If you are an employer, you must withhold federal income, social security (or railroad retirement), and Medicare taxes from your employees' wages or salaries. If you provide communication or air transportation services, you also may have to collect certain excise taxes from people who paid you for the services. (Get Publication 510 for more information on excise taxes.) These taxes are called trust fund taxes and must be paid to the Internal Revenue Service through electronic funds transfer of tax deposits or as payments made with the applicable returns.

The trust fund recovery penalty. — If trust fund taxes are not collected, or not truthfully accounted for, or not paid, or are evaded or defeated in any way, we may impose a trust fund recovery penalty. This penalty is equal to the amount of the trust fund taxes evaded, not collected, not accounted for, or not paid to IRS. We also charge interest on the penalty.

Who has to pay the penalty? — Any person responsible for collecting, accounting for, and paying trust fund taxes, and who acted willfully in not performing one or more of those responsibilities, can be liable for the trust fund recovery penalty. The IRS can collect the penalty from any responsible person or persons who acted willfully if the IRS can't immediately collect the taxes from the employer or business.

"Willfully" means voluntarily, consciously, and intentionally. A responsible person acts "willfully" if this person knows that the required actions are not taking place for any reason. Paying other business expenses instead of trust fund taxes, including the payment of net payroll, is considered willful behavior.

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Any person who had responsibility for certain aspects of the business and financial affairs of the employer (or business) may be a responsible person. A responsible person may be an officer or employee of a corporation, or a partner or employee of a partnership. This category may include accountants, trustees in bankruptcy, members of a board, banks, insurance companies, or sureties. The responsible person can even be another corporation, a volunteer director/trustee, or employee of a sole proprietorship. Responsible persons may include those who direct or have authority to direct the spending of business funds.

If we charge you this penalty, we may take your assets (except exempt assets) to collect the amount owed.

Many employers outsource some or all payroll duties to third-party payroll service providers (PSP). These providers help ensure compliance with the IRS filing and deposit requirements. In the event of default by a third party, the employer remains responsible for the deposit of the federal tax liabilities and timely filing of returns. Depending on the facts and circumstances, and the type of third-party arrangement, an employer who uses a third party to perform Federal employment tax functions on its behalf may remain solely liable for Federal employment taxes, or may become jointly and severally liable for such taxes.

Avoid the penalty. — You can avoid the trust fund recovery penalty by making sure that all taxes are collected, accounted for, and paid to IRS when required. Make your tax deposits and payments on time. IRS employees are available to assist you if you need information on tax deposits and payments. You may contact the IRS by phone toll-free at 800-829-4933 Monday through Friday during your local hours of 7 a.m. to 7 p.m. (Alaska and Hawaii follow Pacific Time). More information is available online at IRS.GOV searching under keywords “Trust Fund”, or searching under the “Forms & Pubs” tab for **Notice 931**, *Deposit Requirements for Employment Taxes*, **Publication 15**, *Employer's Tax Guide*, **Publication 3151**, *The ABCs of Federal Tax Deposits*, and **Form 941**, *Employer's Quarterly Federal Tax Return*.