

Employment Tax

IRS Criminal Investigation (CI) and Employment Tax Cases

- * Reasons to Work Employment Tax Cases
- * Criminal Employment Tax Statutes
- * **What CI Looks For in an Employment Tax Case**
- * Recent Adjudicated Employment Tax Cases from CI's Dallas Field Office

Reasons to Work Employment Tax Cases

From SSA.gov:

Introduction

As a result of changes to Social Security enacted in 1983, benefits are now expected to be payable in full on a timely basis until 2037, when the trust fund reserves are projected to become exhausted.¹ At the point where the reserves are used up, continuing taxes are expected to be enough to pay 76 percent of scheduled benefits. Thus, the Congress will need to make changes to the scheduled benefits and revenue sources for the program in the future. The Social Security Board of Trustees project that changes equivalent to an immediate reduction in benefits of about 13 percent, or an immediate increase in the combined payroll tax rate from 12.4 percent to 14.4 percent, or some combination of these changes, would be sufficient to allow full payment of the scheduled benefits for the next 75 years.

Since the inception of the Social Security program in 1935, scheduled benefits have always been paid on a timely basis through a series of modifications in the law that will continue. Social Security provides a basic level of monthly income to workers and their families after the workers have reached old age, become disabled, or died. The program now provides benefits to over 50 million people and is financed with the payroll taxes from over 150 million workers and their employers. Further modifications of the program are a certainty as the Congress continues to evolve and shape this program, reflecting the desires of each new generation.

Reasons to Work

Employment Tax Cases

- * Full retirement age is 67
- * Social Security Trust Fund Reserves are exhausted in 2037... 19 years from now
- * If born in 1974, the reserves are exhausted when you turn 63... 4 years prior to full retirement age

Reasons to Work Employment Tax Cases

- * When last measured, employment tax violations represented more than \$72 billion of the overall tax gap in this country. According to the 2014 IRS Data Book, 67.9% of the nation's revenue is collected through employment taxes.

Criminal Employment Tax Statutes

- * Title 26 United States Code §7201 - (attempt to evade or defeat tax)
- * **Title 26 United States Code §7202 - (failure to collect or pay over tax)**
- * Title 26 United States Code §7203 - (failure to file) ***Misdemeanor***
- * Title 26 United States Code §7206(1) – (false return)
- * Title 18 United States Code §371 – (conspiracy)
- * Title 26 United States Code §7212a – (impede IRS)
- * Title 18 United States Code § 157 (bankruptcy fraud)

Criminal Employment Tax Statutes

Elements of the Crime

- * **Title 26 United States Code §7202 – (failure to collect or pay over tax)**
 - * Duty to collect, and/or to truthfully account for and pay over;
 - * Failure to collect, or truthfully account for and pay over;
 - * AND
 - * Willfulness

Criminal Employment Tax Statutes

Elements of the Crime

- * **Title 26 United States Code §7201 - (attempt to evade or defeat tax)**
 - * An attempt to evade or defeat a tax or the payment of a tax;
 - * An additional tax due and owing;
 - * AND
 - * Willfulness

What CI Looks For in an Employment Tax Case*

- * Driven by meeting the elements of the criminal statutes (higher burden of proof)
- * Responsible person
- * Jury appeal
- * Tax Loss
- * Prior collection/audit/lien history
- * Issues with subject's personal tax returns
- * Lavish lifestyle and/or expensive purchases
- * WILLFULNESS

**Represents some of factors CI looks for in an Employment Tax Case.*

Elements of the Crime

Examples of Willfulness*

- * Paying employees in cash or part cash/part check
- * A pattern of employment tax violations
- * Failure to file or attempted evasion on State of local employment tax returns
- * Prior conviction for employment tax offense
- * Changing payment reporting from Form W-2 to Form 1099
- * Paying the same person under both a Form 1099 and a Form W-2
- * Paying employees from different checking accounts
- * Paying employees from different business names
- * Large allowances for employee benefits

* *These are just some examples of willfulness.*

Elements of the Crime

* Examples of Willfulness*

- * Large allowances for items such as tools, travel, or other disguised payments to employees
- * Loans to employees that are never repaid
- * A second set of payroll books (W-2 vs 1040 W-2)
- * Employee leasing
- * Fictitious names (ghost employees)
- * Making false, misleading, inconsistent, and contradictory statements to friends, associates, or officials of IRS
- * Not following the advice of an accountant or attorney

* *These are just some examples of willfulness.*

Elements of the Crime

* Examples of Willfulness*

- * Not making full disclosure of relevant facts to the accountant or attorney
- * Influencing or intimidating witnesses
- * Bribing or attempting to bribe an agent
- * Intentionally failing to keep usual records
- * Withholding records that are not covered under the Fifth Amendment privilege
- * Concealment of amount or source of income
- * Substantially understating income or overstating purchases or some other expenses, or creating false invoices to allow the unreported wages to reduce income

* *These are just some examples of willfulness.*

Elements of the Crime

Examples of Willfulness*

- * Destruction of records
- * False entries, alterations, or forgeries
- * Making currency withdrawals from banks to cover cash payroll, whether or not the bank is required to file a CTR
- * Maintaining sole control and responsibility for books, records, and financial transactions
- * Pyramiding employment tax debt, then forming a new corporation
- * **Claims for refund of employment taxes “already paid” on personal return**
- * Having complied with the employment tax laws previously under this or other businesses

* *These are just some examples of willfulness.*

Elements of the Crime

- * Examples of Willfulness – Excellent Jury Appeal
- * LAVISH PERSONAL OR BUSINESS EXPENSES
- * PRIORITIZING OTHER NON-ESSENTIAL CREDITORS OVER IRS
- * NON-IRS VICTIMS (no Social Security credits)

Employment Tax Cases from CI's Dallas Field Office

Criminal Sentences on Recent Employment Tax Cases (Oklahoma)

Defendant's Name	Industry	Prison Time	Restitution Due to IRS
Davis	Strip Clubs	20 months	\$476,000
Friesen	Attorney	15 weekends	\$209,673
Whelan	Best Temps	24 months	\$1,016,100
Zachritz	Lifestyle Pools	18 months	\$461,000
Beddick	Temp Agency	18 months	>\$500,000
Nievar	Heat & Air	12 months	\$187,789
Pielsticker	Arrow Trucking	90 months	\$10 million

Criminal Sentences on Recent Employment Tax Cases (Dallas/Fort Worth Metro/Amarillo)

Defendant's Name	Industry	Prison Time	Restitution Due to IRS
Trebert	Nursing Homes	6 years	\$11,650,000
Ewing	Nursing Homes	10 years	\$11,000,000
Morales	Employment Agency	24 months	\$209,000
Cheek & Breig	Hospital Owners	60 months	\$4,900,000