



# Payroll Tax Debt

## Am I Really Responsible For Company Debt?

April 12, 2023

# Highlights



- **Business entities usually provide legal liability protection to individuals**
- **Certain payroll tax debt can be enforced directly against individuals**
- **Potential liability for not only owners but other individuals associated with the business**

# Payroll Tax Overview



- **Related to compensation payments made to employees - not independent contractors**
- **Two types: 1) employee portion and 2) employer portion**
- **Employee - tax withholding and FICA tax**
- **Employer - FICA matching**
- **Employee component referred to as “trust fund taxes”**  
- the employer is holding employee funds that are required to be paid over to the IRS

# Legal Liability



- The business is responsible for both employee and employer payroll taxes, if payment is overdue interest and penalties may apply
- IRS uses collection techniques against the business to collect unpaid amounts
- IRS can also pursue collection against individuals for the employee portion of the obligation
- Any person who is “required to collect, truthfully account for, and pay over any tax imposed” and “who willfully fails to collect such tax, or truthfully account for and pay over such tax”

# Trust Fund Tax Penalty



- Tax law imposes a “penalty” related to the employee portion of payroll taxes
- Amount is 100% of unpaid taxes
- IRS pursues collection against both the business and the individual(s) - similar to joint and several liability on joint tax returns the IRS pursues collection of entire amount from the business and individuals
- Cannot collect more than is owed

# Penalty - Collections



- **IRS determines responsibility for the trust fund taxes - in addition to the business**
- **Usually includes the business owner but may include any individual with payroll responsibilities - CFO, bookkeepers, etc.**
- **IRS pursues collection as it does with other unpaid amounts - notices, liens, levies, asset seizures, etc.**
- **Collection alternatives are available - i.e. installment agreement, Offer In Compromise, etc.**

# Responsible Persons



- **IRS Revenue Officers make the determination**
- **Utilize Form 4180**
- **Issue with the form is yes/no format**
- **Our advice - prepare the form and submit it to the IRS - opportunity to elaborate on answers instead of just yes/no**
- **Criminal liability can be asserted - i.e. company owner diverting funds to pay for extravagant lifestyle**

# Conclusion / Up Next



- The IRS views the non-payment of the employee portion of the payroll tax as a serious matter - the employer is holding the funds on behalf of employees
- Think before you speak - once asserted dealing with the trust fund penalty is both time consuming and expensive
- Up next - IRS Appeals