



## **The Wrong Place to Borrow Money**

**By: Nathan A. Worthey**

When you find that your business is short on cash and unable to borrow from banks or other sources, it is never a good idea to underpay your employment tax liabilities to get you through the hard times. I realize that it may seem like a temporary solution to cash flow problems, and I am sure it is done with the best intentions of paying the taxes as soon as cash is more readily available. However, very rarely do businesses climb out of that type of situation without several years of repercussions.

First of all, business owners are often unaware that they can be held personally liable for any payroll withholdings that have not been remitted by their companies. The IRS considers these funds to be held by the Company in Trust, and they can impose what is often referred to as the “100% penalty” on individuals deemed responsible for the unpaid liabilities. This Trust Fund Penalty can potentially be imposed not only on business owners and officers of the company, but it is possible for this penalty to be imposed on other employees, such as bookkeepers and comptrollers. It can basically apply to anyone that the IRS establishes was responsible for collection, accounting, and payment of the unpaid taxes. In most cases, a responsible person would be an individual with decision making authority regarding which vendors to pay and how available funds are to be disbursed. Once the IRS has established responsible persons (can be more than one in some cases), they can seize personal assets from bank accounts, retirement funds, and many other personal assets to help recover the balances due.

Secondly, borrowing from the IRS is much more costly than any lending institution. The mistake of not filing a return is often made when there are no funds to pay the tax owed. However, the IRS can assess a failure to file penalty if you simply choose not to file. This penalty is calculated at 5% of the tax liability due for each month the return is late (maximum penalty 25%). For that reason, even if you don’t have the cash to pay the tax owed, we still recommend filing a return. Yet, even if you file your returns on time, though without payment, late payment penalties and interest charges can compound to

result in a much higher cost than is typical with a conventional bank loan. The failure to pay penalty will be imposed at .5% per month, up to a maximum of 25%. A failure to deposit penalty can also be imposed on businesses required to pay their tax by Electronic Funds Transfer (EFT) if they are not timely paid. Interest is assessed on unpaid liabilities at a rate that varies over time, but is typically around 6%.

Finally, there really is no relief for this type of debt. You cannot file bankruptcy and be relieved of this debt. The IRS will not consider a settlement deal, such as an Offer In Compromise to satisfy the liability. Also, there is little to no chance that a penalty will be abated for late payments of payroll taxes, especially when lack of funds is the cause for late payment.

The moral of the story is that you will not come out on top by borrowing funds from the IRS. In fact, there is a good chance you will be digging a hole so deep that you will never see the open surface again.

Large & Gilbert, P.C.

6849 Peachtree Dunwoody Road, Building A-2, Atlanta, Georgia 30328

Phone: (770) 671-1533, Fax: (770) 671-1347 Email: [info@largeandgilbert.com](mailto:info@largeandgilbert.com)