

TAX UPDATE

Ed Zollars, CPA

It's a Matter of Trust Funds—the Responsible Person Penalty Podcast of February 23, 2009 ©2009 Edward K. Zollars, CPA

The Tax Update podcast is intended for tax professionals and is not designed for those not skilled in independent tax research. All readers and listeners are expected to do their own research to confirm items raised in this presentation before relying upon the positions presented.

The Podcast and this document may be reproduced freely so long as no fee is charged for the use of this document. Such prohibited use would include using this podcast or document as part of a CPE presentation for which a fee is charged.

This podcast is sponsored by Leimberg Information Services, located on the web at <http://www.leimbergservices.com>. Leimberg Information Services offers email newsletters on tax related matters, as well as access to a library of useful information to tax practitioners that subscribe to their services.

Keeping the Presses Running

When organizations face financial difficulties, the issue of paying bills becomes a serious problem, especially as vendors begin to demand payment in order to continue to provide products and services required for the organization to continue to operate. In such cases, there's an incentive to pay the “squeaky wheel” and delay paying those entities that aren't threatening actions that could close the operations tomorrow.

For controllers and others in the accounting department, it's clear that a failure to make a payment to a vendor whose products or services can't be replaced could very well mean the immediate closing of the company and the loss of their own current employment. And if the general economic conditions are poor making the chances of quickly finding new employment also poor, it's easy to see a number of “not so nice” personal consequences should the shut down occur.

One of the creditors who likely is not pounding on the door immediately to be paid is the IRS for unpaid taxes. However, for payroll taxes withheld from payroll checks the IRS has a weapon that the other creditors don't have to wield against those who are involved in making the decision to pay bills—that is the responsible person penalty under §6672.

This week we look at an individual who lost his case both in the District Court and on appeal to the Tenth Circuit Court of Appeals on this very matter. We will look at the case of *Richard A. Smith v. United States*, 2009 TNT 30-6, CA10, (<http://ca10.washburnlaw.edu/cases/2009/02/07-4210.pdf>) on appeal from the United States District Court of Utah. Mr. Smith returned to his former employer to try and help them solve their financial difficulties, but ended up being unsuccessful in managing the organization out of its problems—and ended up with a trust fund penalty to show for his troubles.

I. Trust Fund Penalty Provisions

Today we are primarily concerned with a rather simple snippet of text from the Internal Revenue Code that causes certain tax liabilities to attach to individuals other than the specific employer that is initially the entity that owes the tax. IRC §6672(a) provides:

(a) General rule

Any person required to collect, truthfully account for, and pay over any tax imposed by this title who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties provided by law, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. No penalty shall be imposed under section 6653 or part II of subchapter A of chapter 68 for any offense to which this section is applicable.

The above applies most often to taxes required to be withheld from payroll paid to employees—the employee's portion of FICA and the federal income taxes withheld. The trust fund penalty exists separate and apart from underlying liability for the taxes themselves, and may apply to more than a single person, since more than one person might be involved in this process.

The regulation (and it's singular) under this section doesn't go much beyond what is noted above. It provides:

Sec. 301.6672-1 Failure to collect and pay over tax, or attempt to evade or defeat tax.

Any person required to collect, truthfully account for, and pay over any tax imposed by the Code who willfully fails to collect such tax, or truthfully account for and pay over such tax, or willfully attempts in any manner to evade or defeat any such tax or the payment thereof, shall, in addition to other penalties, be liable to a penalty equal to the total amount of the tax evaded, or not collected, or not accounted for and paid over. The penalty imposed by section 6672 applies only to the collection, accounting for, or payment over of taxes imposed on a person other than the person who is required to collect, account

for, and pay over such taxes. No penalty under section 6653, relating to failure to pay tax, shall be imposed for any offense to which this section is applicable. For further guidance regarding the determination of the proper address for mailing the notice required under section 6672(b)(1), see section 301.6212-2.

A person who is held to be subject to this provision is referred to as a “responsible person” and the test for who is that person is our key issue today.

Note that nothing in the above indicates that the person who is subject to the penalty has to have any sort of equity interest in the entity in question—rather the person only must be required to collect, account for and pay over the tax. As should be clear, those are the types of responsibilities that often fall on corporate accountants—or, in a small organization, perhaps we should say the corporate accountant.

II. The Troubled Printing Company

Woodruff Printing, Inc. was a family owned company that was wholly owned by members of the Woodruff family, being first incorporated in 1959. and continuing operations until its eventual failure in 2003.

Richard Smith gets involved in this story, although he was not a member of the Woodruff family. Rather he had been the general manager of the firm through the 1990s, leaving in 2000. However after Mr. Smith left it appears the entity ran into difficulties in the following two years. In January 2002 we pick up the story in the Tenth Circuit's opinion as Richard Smith returned to work for Woodruff Printing:

Mark Woodruff wanted Smith to return as accounting manager, but Smith insisted that he could only help Woodruff Printing if he were general manager and put in charge of overall operations. Mark Woodruff understood that upon Smith's return, all of Woodruff Printing's departments would report to Smith and Smith would be making most of the decisions in the operation areas. After Smith's return to Woodruff Printing in 2002, Smith was also Woodruff Printing's primary contact with the Internal Revenue Service ("IRS") for a system Smith set up to pay employment taxes electronically. Smith was aware from reviewing Woodruff Printing's records prior to his return that Woodruff Printing's financial situation was "bleak."

Mr. Smith was stepping into a troubled company, and it appears the Woodruff family hoped he'd be able to bring the company out of its troubles based on his prior experience with company. In June of 2002 Mr. Smith sent a memorandum to Mark Woodruff indicating that he projected positive net income for Woodruff Printing for 2002.

However very shortly thereafter we have evidence that perhaps Mr. Smith's projections might have been somewhat optimistic.

by July or August 2002, many of Woodruff Printing's suppliers began demanding payment on delivery. As a result, Mark Woodruff developed priorities that favored making payments to two of Woodruff Printing's bank lenders, to Woodruff Printing's landlord, and to certain of the materials suppliers.

But it turns out that the landlord and materials suppliers weren't the only ones that weren't being timely paid. The opinion continues:

In August 2002, an employee of Woodruff Printing's accounting department sent an e-mail to Smith and Mark Woodruff in which she detailed Woodruff Printing's unpaid tax liabilities, including sales taxes, state taxes, and federal employment taxes. According to the e-mail, there were then unpaid employment taxes for June and July in a total amount of \$33,305.22. Despite this unpaid amount, no payments were made to the IRS during August 2002.

It turns out that taxes were also remaining unpaid, and now everyone was on notice about this issue. And while today's case deals with unpaid federal taxes, it's important to note that many states have similar provisions with regard to unpaid state withheld payroll taxes and sales taxes (Arizona CPAs should be aware of the issues that have arise with potential transaction privilege tax personal liabilities for corporate officers under the *Action Marine* decision).

The initial steps that Mark Woodruff took in response to this tax shortfall was to, essentially, leave the matter to be solved by the accounting department. As the opinion noted:

After Mark Woodruff received the e-mail, he held a meeting with the accounting department employee and Smith. Mark Woodruff testified that he came away from that meeting with the understanding that the accounting department "would continue to work on [the tax problem]."

Mark discovered that the problem wasn't being solved. The opinion continues:

Later in the fall of 2002, however, Mark Woodruff found delinquency notices from the IRS in the accounting department. In late October 2002, Mark Woodruff sent an e-mail to Smith asking Smith to prepare and provide a schedule of payments to be made for the next two months for all Woodruff Printing's accounts payable. In that e-mail, Mark Woodruff pointed out that Woodruff Printing had paid tax penalties for being late on taxes, and that taxes should always be kept current.

That latter point is important, since as you'll recall our "responsible person" in the spotlight today is not Mark Woodruff, but rather Richard Smith who has now been instructed that all taxes should be kept current. While "following orders" not to pay taxes is not, by itself, a defense against the penalty, certainly failing to follow orders to pay the taxes is not going to be a good fact when faced with the penalty.

Mark Woodruff continued to take action on this matter, now bringing the rest of the equity holders up to speed. The Court notes:

At some point near the end of 2002, Mark Woodruff informed other Woodruff family members about Woodruff Printing's tax problem. It was determined that Mark Woodruff would monitor Woodruff Printing's payments to creditors more closely, and it was agreed that Smith should limit his check writing to amounts less than \$5000. Mark Woodruff testified, however, that he never limited Smith's authority to pay employment taxes via electronic transfers. The United States also introduced evidence at trial that Smith continued to write checks to Woodruff Printing's creditors in amounts larger than \$5000.

The issue of what Mark Woodruff told Smith to do, and what actions he took became central here, so the Court's summary of facts becomes important. The Court summarized Mark's own testimony as follows:

Mark Woodruff's testimony was inconsistent, at best. He testified that in 2002 and 2003, the standard operating procedure was for Smith to discuss with him the cash flow problem and the priorities for determining what should be paid. He later testified that in 2002, he and Smith discussed how to handle the taxes, and that his strategy then was to "keep the presses rolling." He also testified that in 2003, he made the final decision as to which creditors should be paid, and that he was the one who decided to pay or to not pay taxes in 2003. In sum, his testimony at trial alternated between stating that he and Smith discussed which bills to pay, and stating that he decided which bills to pay.

Richard Smith's position at trial was that he had no authority to pay taxes, and the Court summarized his positions on what happened in the following paragraph:

It is undisputed that Smith was aware throughout the latter part of 2002, and all of 2003 until Woodruff Printing ceased operations, that Woodruff Printing's federal employment taxes were not being paid. At one point Smith advised Mark Woodruff to not pay bank loans and to pay the IRS, but Smith testified he did not pay the payroll taxes because in July 2002 Mark Woodruff told Smith to defer paying the payroll taxes in order to keep the business operating by paying suppliers. During the period in question, there were insufficient funds available to pay all creditors and also pay all taxes. Smith testified that he reported to Mark Woodruff, got payment priorities from Mark Woodruff, and did

not have authority to override Mark Woodruff.

The firm's bookkeeper also weighed in on her view of the responsibilities of the parties:

Woodruff Printing's bookkeeper testified in support of Smith. She stated that during 2002, Mark Woodruff's creditor payment priorities were to first pay two bank loans, and then to pay vendors. She also testified that Mark Woodruff had the final decision-making authority in Woodruff Printing, and that in meetings during 2002, Mark Woodruff had the final say as to which creditors would be paid. She further testified that in August 2002, she had a discussion with Smith about how much was owed to the IRS for payroll taxes, and she testified that she discussed the tax problem with Mark Woodruff three or four times in 2002. Finally, she testified that Rex and Mark Woodruff had ultimate authority over the management and finances of Woodruff Printing.

Also offered as evidence that Mark Woodruff was running the show was his decision not to sell the firm to a former employee early in 2003:

Drew Elkins, a former employee of Woodruff Printing, offered to purchase Woodruff Printing in March 2003, but his offer was rejected by Rex and Mark Woodruff. Elkins testified that Smith handled most operational problems, but that Mark Woodruff had the final word as the "owner" of Woodruff Printing. Elkins also testified that "on a couple of occasions" Smith had generated checks "for a tax deal" and given them to Mark Woodruff to sign, but that Mark Woodruff refused. Elkins testified, however, that he did not know that employment taxes were set up by Woodruff Printing to be paid electronically throughout 2002-03.

Eventually the end did come for Woodruff Printing, and Richard Smith eventually found himself faced with a bill for the trust fund taxes:

Woodruff Printing eventually ceased operations in 2003. The IRS made assessments against Smith pursuant to 26 U.S.C. § 6672, after making a determination that Smith was a person responsible for withholding, accounting for, and paying taxes withheld from the wages of the employees of Woodruff Printing for the last two quarters of 2002 and the first three quarters of 2003, who willfully failed to do so. The total assessments made against Smith were \$279,353. Smith paid a portion of the assessment and then filed suit, seeking refund of that amount. The United States counterclaimed for amounts still owed.

III. Is Richard Responsible?

Richard Smith wasn't terribly happy about being called to task by the IRS about this item. After all, he had returned to the company as the “white knight” to try and restore profitability, did not have any ownership interest in the entity and certainly got indications from the equity holders' representatives that he needed to do what was needed to keep the doors open. Now he was out of work and, to add insult to injury, the government wanted him to pay over the payroll taxes for the company.

However Richard wasn't totally blameless in this situation—and the mere fact he may not have been the “most responsible” person isn't going to mean that he won't be held to be a responsible person if it turns out he's the one that the IRS chooses to go after first (perhaps because he's the only solvent person left standing).

The Tenth Circuit outlines the broad definition of a responsible person that has been used by the Courts, citing its own opinion in the 1993 case of *Denbo v. United States*:

Courts have generally given broad interpretation to the term 'responsible person' under section 6672. A person is responsible within the meaning of the statute if that person is required to collect, truthfully account for or pay over any taxes withheld from the wages of a company's employees. The responsible person generally is, but need not be, a managing officer or employee, and there may be more than one responsible person. Indicia of responsibility include the holding of corporate office, control over financial affairs, the authority to disburse corporate funds, stock ownership, and the ability to hire and fire employees. Among other things, therefore, a corporate officer or employee is responsible if he or she has significant, though not necessarily exclusive, authority in the general management and fiscal decision making of the corporation.

The Court looked at Smith's overall situation and found he possessed sufficient authority to be placed at risk for the penalty:

The evidence at trial showed that Smith was the general manager of Woodruff Printing during 2002 and 2003. Smith came back to Woodruff Printing in 2002, insisting that he be placed in charge of "overall operations." Smith had the responsibility to oversee the finance and accounting functions at Woodruff Printing during the 2002-03 period. During 2002, Smith had the independent authority to draw checks on Woodruff Printing's bank accounts. Although there was testimony that Smith's check writing authority was limited in 2003 to \$5000, the IRS introduced evidence at trial that Smith wrote a substantial number of checks in 2003 that were for amounts larger than \$5000. There was also testimony that Mark Woodruff never limited Smith's authority to electronically pay the payroll taxes.

The key problem is that while Smith was getting at least some signals from Woodruff that he should “keep the presses running” he still retained the right to get the taxes paid, and actually had paid creditors during that period with liabilities in excess of \$5,000 even though, in theory, Mark Woodruff had to sign off on such payments.

It may very well be that Richard paid expenses that were of a type that Mark had indicated weren't a problem, the fact that the “prohibition” was treated so informally became a problem since Richard did not refuse to make the payments and/or force Mark to make those payments. The Court notes:

Smith argues that he was simply doing what he was told by Mark Woodruff, and that he had no power over creditor priority at Woodruff Printing. However, it is clear that: (1) Smith was aware during the quarters at issue in 2002 and 2003 that Woodruff Printing's payroll taxes were not being paid; and (2) Smith paid other creditors rather than paying the payroll taxes. In addition, although Mark Woodruff and Smith had regular meetings discussing creditor priorities, Mark Woodruff also testified that he did not limit Smith's authority to make electronic funds transfers for payment of payroll taxes at any time during 2002 or 2003. And, Mark Woodruff sent an e-mail to Smith in October 2002 stating that taxes should always be kept current.

As noted before, being “less responsible” doesn't solve a potential “victim's” problem here. The Court specifically outlines:

The fact that Mark Woodruff had more control over creditor payment than Smith is not determinative; “significant” control is all that is required. See *Denbo*, 988 F.2d at 1033 (“However, while it is clear that Allred exercised greater control over the corporation than Denbo, section 6672 does not confine liability for the unpaid taxes only to the single officer with the greatest or the closest control or authority over corporate affairs. It suffices that Denbo had significant, as opposed to absolute, control of the corporation's finances.” (internal quotations omitted)); see also *Taylor*, 69 F.3d at 416 (“If an individual possesses sufficient indicia of responsibility, he is a ‘responsible person’ under § 6672 regardless whether he: (1) has the final say as to which creditors should be paid; or (2) has the specific job within the corporate structure to see that the taxes are paid over to the government. The crucial inquiry is whether the person had the ‘effective power’ to pay the taxes -- that is, whether he had the actual authority or ability, in view of his status within the corporation, to pay the taxes owed. Liability under § 6672 extends to all responsible corporate officers or employees, not just to the single ‘most’ responsible individual.” (internal quotations and citations omitted)).

The Court went on to consider Smith's complaint that he was like the taxpayer in a First Circuit case where it was found the "less responsible" person wasn't a responsible person. The case in question was *Vinick v. United States*, 205 F.3d 1 (1st Cir. 2000) and the Tenth Circuit summarizes its findings as noted:

In *Vinick*, the First Circuit stated the "central question in determining whether a taxpayer is a responsible person" is "whether [the taxpayer] had the power to pay the taxes during the quarters in question." *Id.* at 10. The First Circuit found: (1) that the taxpayer had not exercised any decision-making authority over which creditors were paid; (2) that another individual was "in charge of the day-to-day operations"; (3) that merely because the taxpayer had the title of "corporate treasurer," because the substance of his work involved no authority over finances, the titular authority was not heavily relevant; and (4) that the taxpayer having check-signing authority was only relevant if the taxpayer was in a position to exercise his authority (e.g., did the taxpayer have access to the checkbook?). *Id.* at 12-13.

The First Circuit repeatedly noted in *Vinick* that the central question was whether the taxpayer had routine involvement in the day-to-day management such that the taxpayer had control over daily operations. *Id.* at 14. The *Vinick* court concluded: "Absent a finding that [the taxpayer] possessed actual, exercised authority over the company's financial matters, including the duty and power to determine which creditors to pay, as a matter of law he cannot be a responsible person." *Id.* at 15.

The Tenth Circuit found that it could distinguish Richard Smith's situation from that of the taxpayer in *Vinick*. It noted:

Contrary to Smith's assertion, the *Vinick* case does not support his argument that he is not a "responsible person." Unlike the taxpayer's involvement in the company in *Vinick*, Smith did have day-to-day involvement of Woodruff Printing. Smith was the general manager; throughout 2002 and 2003 he wrote checks to pay Woodruff Printing's accounts payable. Smith met "routinely" with Mark Woodruff about the payroll tax liability. It is true that there is conflicting testimony about how much "power" Smith had over creditor priority. However, the standard is whether Smith "had the 'effective power' to pay the taxes -- that is, whether he had the actual authority or ability, in view of his status within the corporation, to pay the taxes owed." *Taylor*, 69 F.3d at 416. It is undisputed that Smith's authority to make the electronic payments of the payroll taxes was never limited, and Mark Woodruff directed Smith at one point to keep the taxes current. To be a "responsible person," Smith need not have had exclusive control over the payments made to the accounts payable of Woodruff Printing.

Smith also objected to the jury instructions and in the portion of the opinion dealing with those instructions we find another case Richard Smith attempted to use to justify his position—that of *Jay v. United States*, 865 F.2d 1175 (10th Cir. 1989). In determining that the District Court's jury instructions were not in error by not properly considering the impact of the orders of a superior, the Court reviewed its original *Jay* decision. The Tenth Circuit notes:

Smith contends that Jay downplayed the materiality of check-writing authority when that check-writing authority was subject to a superior's restrictions. Jay involved a taxpayer who worked as a bookkeeper for a company that did not pay its withholding taxes. 865 F.2d at 1176. The taxpayer, Jay, "was aware of policy decisions by the corporation's executives, signed corporate checks and paid bills to creditors from the corporation's bank account, which included funds withheld from employees' wages." *Id.* But Jay acted according to the instructions from his boss, Helmuth, as to which major bills to pay. *Id.* Helmuth testified that he decided whether to prefer other creditors to the United States. *Id.* at 1177.

However, the court notes that it did not decide that Jay was not a responsible person—just the question of his actions was one for a jury to decide, and so the District Court's granting of summary judgment on the matter was improper. In this case the question did go to the jury, with instructions to consider all of the various facts.

Smith also looked to the ruling in *Finley v. United States*, 123 F.3d 1342, 1348 (10th Cir. 1997) for reasonable cause for the failure to pay. But again the Court found that Smith's case was distinguishable. It explained:

In *Finley v. United States*, 123 F.3d 1342, 1348 (10th Cir. 1997) (en banc), we recognized the "reasonable cause exception" to "excuse the failure to pay" payroll taxes held in trust for the government. We further held that the reasonable cause exception to § 6672 liability should be "narrowly construed." *Id.* We then concluded that "reasonable cause sufficient to excuse a responsible person's failure to pay withholding taxes should be limited to those circumstances where (1) the taxpayer has made reasonable efforts to protect the trust funds, but (2) those efforts have been frustrated by circumstances outside the taxpayer's control." *Id.* In *Finley*, we remanded the case for a new trial to provide the taxpayer an opportunity to present his defense.

The facts in *Finley* differed from those presented here. Under the facts in *Finley*, the taxpayer directed that the payroll taxes be paid, and by the time he found out his instruction had not been followed, there was no longer any money to pay them. Here, Smith knew the payroll taxes were overdue, knew that other creditors were being paid instead of the payroll taxes, and never took any direct action to pay the taxes. He discussed the payroll tax issue

repeatedly with Mark Woodruff throughout 2002-03, but never actually attempted to pay the taxes. According to the evidence presented, he was even directly instructed in one instance to keep the taxes current. The reasonable cause exception to § 6672 liability does not fit the facts of this case.

So Richard Smith, even though he returned to a company already in trouble and eventually ended up with an apparently not clearly defined oversight from the owners whose instructions seems contradictory (both “keep the taxes current” and “keep the presses running” are given to Smith as instructions at various points), was liable for taxes—a result the Tenth Circuit notes may appear “harsh” (I'm sure Mr. Smith may have a different word for the result). The Court notes:

Although it is a close case, considering the fact that some of the "traditional" indicia of responsibility are missing -- Smith was not a stockholder in Woodruff Printing and it was a disputed fact whether Smith had authority to hire/fire -- the indicia are merely factors to be considered amongst the totality of circumstances. In *Denbo* we emphasized that courts, including our court, have generally given a broad interpretation to the term "responsible person" for purposes of § 6672 liability and *Denbo* states that the "responsible person" generally satisfies the listed indicia, but need not in every case. Given our scope of review, we cannot conclude the district court erred in denying Smith's motion for judgment as a matter of law. When referencing the relevant indicia of a "responsible person," we cannot say the jury's verdict was against the great weight of all the evidence.

IV. Lessons

Unfortunately, many controllers for small enterprises and those associated with payroll in any sized organizations are starting to face these issues as funds aren't available to meet all demands. As well, the weekly updates on unemployment statistics are a reminder that if an accountant loses this job, he/she may be facing a prolonged period of being out of work. Pressure mounts from above to “keep the presses running” by paying off those creditors who pose the most immediate threat to close the doors, hoping that by the time the other creditors start pushing there will somehow be funds to solve all the problems.

A key fact to take away from this case is that all too often in these cases where non-owners with accounting responsibilities get nailed with responsible person penalties is that tend to end up both with the penalty *and* still end up unemployed (when the company goes under anyway—which happens all too often with an entity that doesn't have the money to meet its payroll tax obligations).

The key issue is that you allow any other obligation to be paid when you are aware that the tax obligation is outstanding and you possess the capabilities to see that the taxes are paid. Since in many small business organizations the controller possesses the effective ability to select who gets paid and who doesn't, they are always at risk if the payroll taxes aren't paid.

If you become aware that payroll taxes have not been paid for your organization and you can, by any stretch of the imagination, be deemed to have the ability to insure those taxes are paid, you need to take immediate action. Certainly you have to insist that the taxes be paid immediately and insure you take no action that allows any other debt to be paid (at least if you aren't willing to pay that debt out of your own pocket). Those “up the line” (often the owner) need to be aware of the unique nature of this obligation, and the fact that by asking you to consent to paying other vendors, they are effectively asking you to guarantee the trust funds taxes out of your own pocket—as well as doing some themselves, regardless of the fact they might believe there's a corporate entity shielding them from liability.

And if it becomes clear that any vendor will be paid prior to the taxes getting paid, it is time to seriously consider resigning your position, as difficult as that may be in an economic climate where it's not clear who is going to be hiring at this point. By doing that you'll just be unemployed. If you don't do that, there's an excellent chance that in the near future you'll end up like Mr. Smith—unemployed and facing an assessment for the entire balance of the unpaid payroll taxes.

Those in public practice also need to be aware of these issues. First, while it's not a usual situation, it certainly is possible to imagine cases where a public accountant could become a responsible person, especially as “rent a controller” services came into vogue over the last decade. Second, you need to counsel clients about this issue—sometimes their accounting departments, not being aware of the risk to themselves and not wanting to “bother” the owner, may end up delaying payment of trust fund taxes.

An owner is going to have an uphill fight convincing the IRS that he/she wasn't aware of a problem and certainly when they do become aware of the problem (perhaps like Mark Woodruff when someone from the accounting department decides to mention the issue in an email or when he stumbles across an IRS notice) they need to know that they have to take immediate steps to handle the problem or they just took on the burden themselves.