4180 Interviews: How not to get caught up in the IRS' wide net

Presented By Kenneth Mullinax, CPA, EA, CTRS

1

What You Are Going To Learn

- ▶ Who is Responsible?
- ▶ Who is Willful?
- ► How RO's guide the interview to snare the interviewee into the TFRP
 - ► How to avoid it.
- ► 6672 vs 7202

2

Who is Responsible?

- ► Generally it means anyone who has a fiduciary responsibility to perform
 - ▶Officers of the corporation
 - ► Members of the LLC
 - ▶ Partners of the Partnership



Who is Responsible?

- ► Could be someone who's job description gives them authority to perform
 - ► Accountants
 - ▶ Bookkeepers
 - ▶ CFO
 - **▶** Spouse
- Anyone who should have collected the payroll tax and paid it to the Government, but didn't

4

Who is Willful?

- Anyone who had the authority to pay bills and paid ANY bills or liabilities but didn't pay the Payroll Tax
 - ▶ Payroll
 - **▶**Utilities
 - **▶**Supplies

▶ Rent

5

Who is Willful?

- Usually anyone who is on the signature card and signs checks
- ▶ This catches lowly employees in the TFRP net
- ► They had to know the tax was due and not paid



Collectability

- ▶ In order to assert the TFRP against a party, the RO must also show that the assessment will be collectible
- ► Cannot assess if not collectible
- ▶ RO prepares form 4183 for manager approval and must show willfulness, responsibility, and collectability

7

Typical 4183 Statement By RO

Mr. Smith is the President of the company and therefore responsible for financial decisions including the payroll tax. He willfully paid other liabilities ahead of the payroll tax, such as payroll, rent, and utilities.

This assessment will be collectible through future equity in assets and/or income tax refunds.

8

Form 4180 (August 2012)		or Pers	onal Liabili	ty 1	or E	xcise Tax	xes	acovery	
Section I - Person	Interviewed								
Litare				_	\neg			(228)	
5 Address (deed, ob-	Adv. PE wat				_				
					- 1				
							I. Sint telephone number		
		New Article	1.04 per see a			person march an	* septi	render?	
			Time the	_		CONTRACT OF			
			E Sa						
	tife and how were you associal being intercement it a payout in	of with the bu	man, Canada					nder VIII	
Section II - Raspor									
1. State whether you profession in	performed any of the dubes. "for dies.	national females	better for the bust	****	and the	- Stree periods o		th you	
	Did eos.			790	100	Fram	Eulera	Te	
- National and Records	only for the business?			-		Printe.	_		
	payment d'obsoration?			ж	181				
	p. or authority hyperchasured								
		at acres.		-	-				
E. Have knowledge withheld tones were not pain?" n. Authorize secret?"					-				
s Authoritie projekt? [Authoritie or make Pedesid Tax Describs?]					181		_		
					-				
	of the six of the shoot from			0					
Tierre	the do but in the spore, little	Gentlet Number							
	ob e la minera a ba			-	-		_		
Total Manager	Have signature authority or PIN configuration business bank accounts								
Barrier Polarierini									
Section III - Signal	res								
								nt and	
complete.									
Sprakus ef centre interviewel						Craffe			
Sone of Province						lun.			
20010-000									
Take year of consisted interiors from some to consider other second									
Topoper Statement on Page 4: 1 Tes 1 To 10 Intendee Curtinued on su						_	- FD-	- Fine	
	or Page 4. Thes This		memore Contr	umi i	en skille	minus balan.	120	- 24	
	y Ad States See		Time to Paramet			Tartes Travel	Taile of T		
Total Bar Street					_				

	e.					
Pusition (e.g. president, alreador)	Name	Address	Care			
A STATE OF THE PARTY OF THE PAR						
	state Federal For Physiest	1. Other than the GETYS, chen the business				
TURNS (CETTERS) was future?	IN DEPOSIT OF THE	swittenium)*				
		1294				
Elm .		City Was				
The Type is when we had	Temples streament in 200	To allow are the Pilledowner	only material			
NAME AND ADDRESS OF THE PARTY O		100000000000000000000000000000000000000				
Does the business the Farm art up	ottoristy.					
IT to White automatic me	Farm Int 1					
The Months for represent	months.					
ortho V. Resideday William						
Every the time the debracement over their an east, morphys, white: unless		ne hereafter som any brancial ellipsions.				
The	eux adedones umer in beforess	t to water of				
The Washington sery						
Note all or a continue of the country	med In Delayer					
Elve	Eta					
Elm		The make a part or course speci				
Was authorised						
		1 West actions for your allesses to use that				
Altra planetters and have by the	stration offices or street	7 Who hardled RS contents such as pho	re cela.			
site word parties reporting nation	stration, officers, or siner president transport	2 Who hardwords contacts such as pho- partequations or radio by PE proper	or carb.			
Life world parties reparting nation	stration, officers, or street prent of the larger?	2 Who harded RS consets such as phis semeganisms or rate by RS preson	4 min.			
site word parties reporting nation	allocation, officers, or other prent of the laster?	7 Way hardworld contents such as place participations or 74% by PC person	or orde.			
Life world parties reparting nation	instant offices or sine precipitie laser?	3 Who handled RS contents such as pho- and expeditions or Adds by RS present	4 min.			
the voted parties regarding names [] has [] has	prent of the laster?	an equation of rate by PC press				
the word parties reparting names to to to	precipitive (precipitation)	West follows services into give, and				
the voted parties regarding names [] has [] has	precipitive (precipitation)	an equation of rate by PC press				
the word parties reparting names to to to	precipitive (precipitation)	West follows services into give, and				
the word parties reparting names to to to	precipitive (precipitation)	West follows services into give, and				
the word parties reparting names to to to	precipitive (precipitation)	West follows services into give, and				

Soction VI - Poyroit Service Provider (PSF) or Phohosocout Employer Organization (PEC)					
A - Third-Failly Payer Arkangements immplete his settler only if you are interdening a begager of	n upod a Winisparty payor)				
Who agreed the service contract or emerced into the agree to service with the third party pages?	seneri. 2. And in the business handled the contacts with the third garly payer?				
1. Who was your contact at the third-party payer?	4. Now were funds in he made available for the trind party page: it pay the lates?				
	Name of Earth(s) and Assessi number(s) from which funds serve to be transferred.				
What antone did you take to early the first party paper living returns, or making required payments?	The Lords available for the third party paper to use for payment of the large?				
	Fyes, explain in detail has anti-when the name; was				
	torolored to the third party.				
7. Were you owns that the third-party payer was not mad	ing the - 8. Did you receive IRS notices indicating that the employment to-				
required payments?	returns were not find, or that the ampleyment tones were not part?"				
Ten Dio	Tes Dio				
8 - Third Faily Fayer Companies complete this session only I you are interceiving a Total Fails to					
1. Who is soon constitution benefit the contain will the					
 Who at the start invalves signed the service centred extend into the expensed for services? 	 A Who had certific over the payments of the stants employment least? 				
f. First ware funds to be made analysis from the claritie	universe to pay the learn?				
Bork Yomeo:	Account Number Co.				
6. Here there book antually available for you to make the	tas papments?				
Type, exploring detail has projuden the numerouse.					
Type, eight in that the art with the name, that	Carrier and the street party.				
Fine, what actions old you take to attempt to collect the	Ands for the stant"				
Section VII - Personal Liability for Excise Ton Co Computer only Filteriness is required to the Excise	Des				
1. Are you pears of any required endow tax returns which been final?	have not 2. With respect to excise taxes, were the partons or customers informed that the loss pays included in the sales prior?				
The The disposes	□ No □ Fee				
If the lability is one of the "collected" taxes phenoperis persons or properly and communications; was the last	for of A. Ware you seems, during the period for account, that the low required authorities of the last?				
STREET THE	□te □res				

Tell your story Why you should not

ection VII - Signatures	
induse that these examined the information given in this interview and to the book of my troubledge register.	
prishure of person interviewed	E-size
proture of interviewer	Date
de copy of completed interview form given to person interviewed	
soview Handouts ("Y Egiven-propials why notificace hidrop)	
Notice 689, Privacy Act Notice Section 184, Could Not be Personally Liable for	
raing Number 2010F area in par	Form 4190 (Nex. 1-2012)

The Interview

- ▶ Never allow TP to give interview in person
- ▶ RO will demand it, but has no authority to enforce it
- ► Always provide signed 4180 you prepare later
- ▶ RO cannot summons for information already in their possession

13

The Interview

- ► If the RO asks the questions in person. He/She will twist the wording to urge the TP to answer in damaging ways
- ▶ Never let RO in the same room as client
- ▶ 6672 vs 7202
- ▶ RO decides

14

6672

\$ 6672 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 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.

7202

§7202. Willful failure to collect or pay over tax

Any person required under this title to collect, account for, and pay over any tax imposed by this title who willfully fails to collect or truthfully account for and pay over such tax shall, in addition to other penalties provided by law, be guilty of a felony and, upon conviction thereof, shall be fined not more than \$10,000, or imprisoned not more than 5 years, or both, together with the costs of prosecution.

16

6672 or 7202

- ► All TFRP cases are criminal
- ▶ RO must decide if case is civil or criminal
- ▶ Vast majority are civil
- Providing a signed 4180 admitting responsibility and willfulness could be self incrimination
- ▶ You must decide which info to provide

17

TFRP Defense

- ▶ Usually the owner is responsible
- ▶ RO wants to catch the spouse also if possible
 - ▶ Allows for easier collection from joint assets
- ▶ Decide if you will allow client to self incriminate with a signed 4180

TFRP Defense

- ▶ For clients you believe are not liable
 - ▶ Provide signed 4180 showing denial of liability
 - ▶Don't let RO interview
 - Fill out page 4. Be verbose.
 - Provide 433A (hopefully showing no ability to pay)

19

TFRP Defense

- ▶ Remember TFRP must be collectable
 - ▶Good reason to file protest if L1153 is issued
 - ▶ Try to prove collectability prior to L1153 so hopefully RO won't assert the penalty to your client.

20



