

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

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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

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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

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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

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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

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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

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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

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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.

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Form 4183 Report of Interview with Individual Relative to Trust Fund Recovery Penalty or Personal Liability for Excise Taxes			
OMB No. 1545-0047 (Rev. 10-2010)			
Section 1: Interview Information		Section 2: Interview Results	
1. Name of individual interviewed	2. Date of interview	3. Name of interviewee	4. Title of interviewee
5. Address (street, city, state, ZIP code)	6. Phone number	7. E-mail address	8. Other contact information
9. Name of business and location (street address, city, state, ZIP code)		10. Date of business opening	
11. What are you in the business for? (check all that apply)		12. How long have you been in business?	
13. What are you in the business for? (check all that apply)		14. How long have you been in business?	
Section 3: Assessment			
15. Have you ever been assessed with a trust fund recovery penalty or personal liability for excise taxes?			
16. If yes, when was the assessment made? (month and year)			
17. How much was the assessment? (amount and dollar sign)			
18. How long have you been in business since the assessment was made?			
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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

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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

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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.

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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.

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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

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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

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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)

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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.

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Thank You



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