

Coffee Hour Courses[®]

Competence in Small Bites[©]

American Society of
Tax Problem Solvers

ASTPS A Non-Profit Professional Association
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Trust Fund Recovery Penalty Basics ©

Part 2 of 2



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Voluntary Payment of Delinquent Payroll Taxes



Should be designated to the trust fund portion of the tax to reduce exposure to the individual(s) for the TFRP.



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Voluntary Partial Payment



- Lacking specific instructions as to the application with assessments for more than one taxable period,
- The payment will be applied in a manner serving the best interests of the government.



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Order of Application of Payments



If the amount applied to a period is less than the total liability for the period...

The amount will be applied to the tax, penalty, and interest, in that order, until the amount is absorbed.

This procedure also applies if there are unassessed amounts for which the Service and the taxpayer agree the taxpayer is liable.



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Responsible Person Paying for a Corporation...



- Pay by cash, cashier's check, certified check, or other acceptable payment form.
- A responsible person may provide the funds to the corporation and pay with a corporate check.
- Payment is not made with a corporate check?
 - The responsible person must provide a signed statement certifying the payment is being made on behalf of the corporation for application to the trust fund liability.

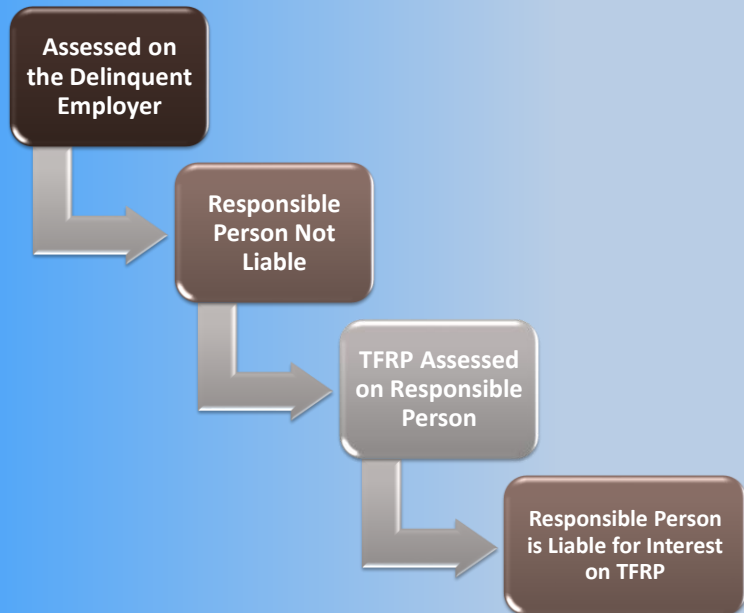
I/We [Name], hereby tender payment of \$xxx and specifically request that such funds be applied to the trust fund tax liability of (Business Name and EIN) for the period(s) ending (List the Periods).

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Penalties and Interest



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Other Penalties



§6672, §6663, & §7202

To the extent the TFRP is asserted the following will not be asserted for the same offense §IRC 6672(a):

- The 20% accuracy-related penalty imposed under IRC §6662
- Nor the 75% civil fraud penalty for the failure to pay tax under IRC §6663.

On the other hand, no prohibition exists against imposing criminal penalties, i.e. the willful failure to collect or pay over tax under IRC §7202.

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4180 Interview

IRM 5.7.4.2.4



Interview to Determine Responsibility

Interview process is controversial for two reasons:

- T/P would prefer to independently fill out the form with the representative's input or have the representative complete the form for them, and just meet with the RO to review the form.

HOWEVER...

- The IRM advises the RO to personally complete the form, and not allow a blank copy of the form to be given or mailed to the potentially responsible person or his representative



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Refuse to Participate in the 4180 Interview?



When the client undoubtedly will be assessed with the TFRP the 4180 interview only benefits the IRS.

Often the RO interviews the t/p and completes Form 4180, t/p signs it without reading it, only to find out later that the answers written by the RO are wrong.

BEST PRACTICES TIP

The rep should review the 4180 with the client before the interview.

Additionally, the rep should carefully review the form before taxpayer signs, and a copy should be obtained.

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Documents Supporting TFRP Recommendation

ROs are instructed to accumulate *core evidence* to support a TFRP recommendation. In most cases will consist of:

- a) Form 4180 documenting the interview(s),
- b) The Articles of Incorporation,
- c) Bank signature cards or electronic PINS/passwords, and
- d) A sampling of canceled checks or bank charges demonstrating preference in payments to other creditors instead of the government.

IRM 5.7.4.2.7



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Other Records Reviewed as Core Evidence:



- Partnership agreements,
- Minute books,
- Forms 941 and Payroll records,
- Duties (and changes to duties) of officers, directors, etc.
- Appointments and resignations of officers, directors, etc.
- Responsibilities of individuals to file and pay tax returns.
- Issuance of stock to officers, directors, etc.
- Assets transferred to officers, directors, etc.
- Loans made to officers, directors, etc.
- Unreported payroll and other taxes,
- Diversion of funds.
- Borrowing of funds not used to pay taxes.
- Responsible parties within a PSP.
- Responsible parties within a PEO.

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Additional Bank Records that may be Reviewed:



- Correspondence to the bank relative to changes affecting the signature cards or PIN assignment information,
- Loan applications and records of loans,
- Any other records that may be relevant to determining which individuals were involved in the financial affairs of the business.

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Examples of More Bank Records that may be Reviewed:



- Authority to sign checks and make deposits.
- Authority to authorize borrowing.
- Control to transfer funds to officers, members, etc.
- Excessive salaries, expenses, etc.
- Authority and handling sales of assets.
- Payments for ownership rights in the business.
- Payments to third-party payers.
- Any other relevant records.

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Look for the Related Course *Defending the TFRP*



Topics in *Defending the TFRP*:

- Collectibility of TFRP
- Appeals of TFRP
- Mediation of TFRP
- Collection Stay of TFRP
- Strategies and Defenses of TFRP
- Much more...

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Check Out *Willfulness and Responsibility and the TFRP*



Topics in *Willfulness and Responsibility*:

- When is a person responsible?
- When is a person Willful?
- Collection Stay of TFRP
- Strategies and Defenses of TFRP
- Much more...

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More Information?

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Almost Work Time!!

Hope you enjoyed
this Coffee Hour
Course



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