

# Officer and Owner Liability for Corporate Tax

*By Phyllis Horn Epstein*

Phyllis Epstein cautions that business owners who incorporate to limit personal liability may still be personally liable for corporate tax obligations and subject to criminal and civil penalties even if they have delegated the responsibility for paying taxes over to another officer, shareholder or employee.

**B**usiness owners hope to limit personal liability for business debts and obligations by incorporating. Shareholders, corporate officers and directors should be aware that the corporate form of business will not always insulate them from corporate obligations, including obligations to taxing authorities.

Individual liability for corporate tax and penalties is dependent upon a number of factors including:

1. the individual degree of involvement in the finances of the corporation;
2. behavior that exemplifies willful failure to either file tax returns or pay tax; and
3. conduct that contributes to the filing of a false income tax return.

Shareholders and employees may also be surprised to find that their liability for corporate tax and penalties arises unexpectedly when they become transferees of the assets of an insolvent corporation. An individual owner or officer may become responsible for the corporation's tax, interest and penalty in addition to the assessment of individual assessments of penalty and interest. Some tax penalties are classified as

misdemeanors while others are felony offenses. In some instances, the obligation to pay has no statute of limitations and cannot be extinguished in bankruptcy.

## **Criminal and Civil Penalties**

For officers and owners of corporations, particular attention should be given to civil and criminal tax penalties that may be imposed for the nonfiling of corporate returns, nonpayment of tax or the filing of a false and fraudulent return. In some instances, these violations include steep fines and possible imprisonment. Officers, directors and employees of corporations who willfully participate in these violations on behalf of the corporation will be subject to joint or individual liability for all relevant penalties. In many instances, both the corporation and the officer, director or employee can be assessed penalties for the same conduct.

## **Failure to File Tax Returns or Pay Tax**

Officers and employees of a corporation may be subject to civil and criminal penalties under the

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Internal Revenue Code (“the Code”) if they have a duty to see that returns are filed and taxes paid and willfully fail to do so.<sup>1</sup> The willful failure of a corporation or individual to file a return and pay tax is a misdemeanor under Code Sec. 7203 subject to a maximum corporate fine of \$100,000. For an individual, the fine is \$25,000 and/or up to one year in prison.<sup>2</sup> Under Code Sec. 7203, willfulness is a “voluntary, intentional violation of a known legal duty” as opposed to conduct that is negligent or inadvertent.<sup>3</sup> A felony assessment under Code Sec. 7202 for failure to collect and pay over tax may be assessed as well.

As a general rule, the corporation is vicariously liable for crimes committed by its officers and cannot absolve itself from liability by delegating its duty to timely file tax returns to an employee<sup>4</sup> or a third party such as a payroll tax service.<sup>5</sup> However, where officers, acting without apparent authority, engage in conduct that makes it impossible for the corporation to file or pay tax (in effect the actions “disable” the company), the corporation will not be subject to penalty. In one Third Circuit case, two officers’ acts of embezzlement prevented the timely filing of returns and payment of tax.<sup>6</sup> One officer was the chief executive officer and chairman of the board, the other was the chief financial officer. Their joint misconduct so severely disabled the corporation that it was relieved of liability for penalties.

However, if a corporation fails to institute adequate and reasonable internal controls to insure that taxes are paid and returns filed, even if disabled, it may be vicariously liable for the acts of its officers and agents. If there is an absence of outside auditors or checks and balances over the payment of taxes, the failure to file may be viewed as corporate willful neglect.<sup>7</sup> For example, one company left all matters of tax filing to its controller without any oversight. Ultimately, it was discovered that taxes had not been properly filed or paid. In holding the company responsible, the court noted the lack of oversight by even a simple process of attaching copies of tax deposits to the corresponding returns.<sup>8</sup> Had this been done the court was of the view that it would have been easy to discover that tax deposits had not actually been made.

### **Assisting in the Preparation of a False Return**

Corporations and their officers and employees may be subject to civil or criminal penalty for the willful

attempt to evade tax by the filing of a false and fraudulent tax return or by aiding in the preparation of that false return.

Under Code Sec. 7206(1), it is a felony for any person to willfully make and subscribe any return, statement or other document that contains or is verified by a written declaration that it is made under the penalties of perjury, and which he does not believe to be true and correct as to every material matter. Under Code Sec. 7206(2), it is a felony for any person to willfully aid or assist in, or procure, counsel or advise in the preparation or presentation of a return, affidavit, claim or other document that is fraudulent or is false as to any material matter, whether or not such falsity or fraud is with the knowledge or consent of the person authorized or required to present such return, affidavit, claim or document. If found guilty, the taxpayer will be subject to a maximum fine of \$100,000 (\$500,000 in the case of a corporation) and/or imprisoned up to a term of three years.

Corporate officers who are ultimately assessed penalties for assisting in the filing of a false return usually are involved in some scheme to falsify sales records and receipts so as to prevent the accurate reporting of corporate income.

- In one Ninth Circuit case, an individual taxpayer was convicted under Code Sec. 7206(2) for preparing false corporate financial statements that then served as the basis for false corporate tax returns making it appear that tax had been paid.<sup>9</sup>
- In another case, where penalties were assessed, individual taxpayers had created fictitious invoices and shell companies that were used to prepare false excise tax returns.<sup>10</sup>
- In another case, the taxpayer knowingly signed a false tax return by withholding sales invoices from the return preparer.<sup>11</sup>
- In *Wolfe*, a Sixth Circuit case, the taxpayer was president and principal stockholder of the corporation and in control of the books and records of the corporation. At the president’s direction the corporation paid numerous expenses for his personal travel, home appliances and furniture, gifts to family members, major home repairs and reconstruction. The amounts were deducted as corporate business expenses resulting in an underreporting of corporate income. The court found the president guilty of causing the filing of false and fraudulent corporate tax returns (in addition to false

individual tax returns). The elaborate diversion of corporate income to the president's personal expenses caused the corporation to underreport its income.<sup>12</sup>

## **Employment Withholding Taxes**

An employer is responsible for withholding, depositing and reporting employment taxes<sup>13</sup> and is liable for the correct amount of tax even if the employee fails to correctly withhold.<sup>14</sup> Employment taxes are imposed on employee compensation, which includes both wages and benefits. Because the withheld taxes belong to the government and must be paid over, they are held in trust by the employer and are known as "trust fund" taxes.<sup>15</sup>

Employment taxes include withheld income tax, social security and Medicare taxes. Employers and employees each contribute toward Social Security and Medicare taxes, identified as FICA on the employee's Form W-2. As of January 1, 2011, employers are required to deposit employment taxes electronically using the Federal Tax Payment System (EFTPS) and report withheld taxes on Form 941. Payments and returns are due quarterly with an exception for those who have an employment tax liability of \$1,000 or less. Deposits include withheld income tax, withheld and employer social security tax and withheld and employer Medicare tax.

The trust fund recovery penalty equals the full amount of unpaid trust fund taxes comprised of withheld income taxes and the employee's portion of Social Security and Medicare taxes.<sup>16</sup> Failure to file and failure to pay penalties may be imposed (although the failure to file penalty is reduced by the amount of the failure to pay penalty if they overlap). Interest accrues on unpaid taxes.

The failure to report and withhold is frequently the result of misclassifying an employee as an independent contractor, a 1099 employee for whom there is no withholding. Even a delegation of responsibility to an employee or third party to withhold and pay over trust fund taxes will not relieve an employer of responsibility for the tax caused by a miscalculation or omission. This is the case

even if a third party, including the owner of a hired payroll tax service, misappropriates the trust funds by embezzlement.<sup>17</sup>

The trust fund recovery penalty may be assessed on any responsible person who is charged with the duty of collecting, accounting for and paying over employment taxes and who willfully fails to do so. An act of willfulness includes the payment of other creditors, knowing that trust fund taxes have not been paid. Paying the bill for office supplies while knowing that taxes have not been paid amounts to an act of willfulness. A simple indifference to the requirements of the law and the nonpayment of taxes is also a sufficient act of willfulness. In sum, willfulness is demonstrated if the responsible

party knew or should have known of the requirement to pay employment taxes and the existence of an outstanding tax liability.

A responsible person may include anyone "... who signs checks for the business or otherwise has authority to cause the spending of business

funds."<sup>18</sup> Such a person may include an officer, employee, partner, accountant, volunteer or director/trustee. Persons acting under power of attorney or as a stand-in, e.g., where wife covers business during husband's illness or a personal representative of an estate who runs a business after the death of a decedent may be a responsible person as well.

A responsible person has "significant control" over financial affairs of the business even if another has the ultimate authority over corporate funds and even if that person is not an officer or director.<sup>19</sup> The definition of "significant control" was clarified by the pronouncement of a seven factor guideline by the Seventh Circuit court.<sup>20</sup> The seven factor guideline provides that the person with significant control may be someone who:

- is an officer or member of the board of directors;
- owns shares or possesses an entrepreneurial stake in the company;
- is active in the management of day-to-day affairs of the company;
- has the ability to hire and fire employees;
- makes decisions regarding which, when and in what order outstanding debts or taxes will be paid;

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- exercises control over daily bank accounts and disbursement records; and
- has check-signing authority.

This seven-factor test has been applied by other courts. The trust fund penalty did not apply where a tax advisor was only a board director and had 8.3-percent ownership interest or where the taxpayer was a director and 18-percent owner.<sup>21</sup> Other courts have held that the fifth factor is the most significant: who decides whether or not to pay taxes.<sup>22</sup> The individual with significant and not necessarily exclusive control over financial affairs may be the responsible party. The individual who is responsible for hiring, firing and check writing with significant authority over financial affairs of the company, or who decides which bills get paid and whether taxes get paid before other creditors, is a "responsible party."<sup>23</sup> Control is distinguished from check writing duties that are ministerial.<sup>24</sup> An individual who may pay the bills under another's direction is not a responsible party.

Additional factors that have been determinative include: ultimate authority over finances; whether Board authorization was required over hiring and firing of employees or over check writing; the level of involvement in the business; access to corporate books; authority to negotiate with IRS; the need for permission from another to pay taxes; who signs the quarterly tax returns; and those with oversight responsibility.

Responsibility begins at the time of withholding—regardless of whether that person is employed at the time taxes are to be paid. It is critical for a responsible person to insure against liability after leaving a company in the event the company later fails to pay over the taxes that were withheld. A letter or agreement of resignation should address this issue. If resigning from a parent company, the resignation letter should address trust fund taxes of the subsidiaries as well.

When more than one person may be a responsible party, the IRS may seek full reimbursement and judgment against any and all responsible parties. Each party is responsible for the full tax regardless of the extent of its participation. The IRS may then abate the total liability by amounts paid by each responsible party AFTER expiration of the statutory period for filing a refund suit or adjudication of a refund suit. The failure to collect and pay over employment trust fund taxes is a felony under Code Sec. 7202 for which there may be imposed a fine up to \$10,000 and imprisonment for up to five years. Individuals

may be criminally liable under Code Sec. 7202 and subject to civil penalties under Code Sec. 6672.<sup>25</sup> The willful failure to file a Form 941 for employment taxes is also a misdemeanor subject to penalty under Code Sec. 7203<sup>26</sup> and may be imposed on persons listed in Code Sec. 7343.<sup>27</sup> Civil penalties under Code Sec. 6656 may be imposed for the failure to make Form 941 deposits with an authorized depository.

Individuals must, therefore, be acutely aware of the potential for personal liability for trust fund taxes based upon the level of their awareness of the finances of the corporation in which they are involved, the authority they have to sign or approve checks and direct payments and even with hindsight view that the nonpayment of taxes was an event they should have known of and failed to correct.

### **Liability of Officers and Corporations**

Corporate fraud is the result of the fraudulent conduct of officers and owners that can then lead to both individual and corporate assessment of fraud and negligence penalties.<sup>28</sup> As stated by the United States Tax Court: "[w]e may impute the fraud of a shareholder or officer of a corporation to the corporation if the shareholder or officer controls the corporation, the corporation was the agent's alter ego or the corporate agent's fraudulent acts benefited the corporation."<sup>29</sup>

The United States Tax Court has held that the corporation has sufficient fraudulent intent to evade tax where its presidential officer and other officers who were also majority shareholders were aware that the returns were false and had participated in supplying false information of sales receipts to the tax return preparer. The president, knowing the return was false, signed in his official capacity. The Tax Court held that a "corporation can act only through its officers and that it does not escape responsibility for the acts of its officers performed in that capacity. Corporate fraud necessarily depends upon the fraudulent intent of the corporate officer." The Second Circuit court, affirming the Tax Court, stated: "[a] corporation can act only through individuals who are its officers or employees. We are entitled to impute to the corporation the actions and motives of [its chief officer] ... when he was acting on behalf of the corporation. ... Therefore, the corporation is liable for the addition to tax for fraud ..."<sup>30</sup>

It follows that the diversion of corporate funds to an

owner can result in civil and criminal fraud penalties attributable to both the corporation and the individual as both benefit from the underreporting of income.<sup>31</sup> In *J.J. Dix, Inc.*, the taxpayer ran a family business and fraudulently diverted corporate receipts to his own accounts while also willfully failing to accurately report corporate income on its internal books and records.<sup>32</sup> Unfortunately for his son, the other innocent partner in this business, corporate fraud was assessed against the corporation as well because: “[T]he corporation, acting through Jacob Dix as its agent must be responsible for the fraud of its president in filing false corporate returns.” In *Auerbach*, the corporation was engaged in the manufacture and sale of shoes. The corporation’s president and sole shareholder sold company supplies and pocketed the proceeds without reporting them on the corporation’s official books and records. The fraud of the president was imputed to corporation.<sup>33</sup>

In *Federbush*, the corporation was in the business of selling looseleaf binders, catalog covers and zippered cases. The owners, who were also shareholders and brothers, acting in concert with one another appropriated cash and paid for personal expenses from the corporation. One shareholder, also the president, took proceeds of unrecorded sales and rental income and also took cash as denoting it as personal expense reimbursement. He was able to accomplish this with unnumbered invoices that were withheld from the bookkeeper. Because of the complicity of the owners and because the underreporting of corporate income was not due to “ignorance, oversight, or lack of comprehension,” the corporation was also assessed a penalty for filing false and fraudulent returns. As demonstrated by *Federbush*, in order to impute fraud to the corporation and to distinguish the conduct from a simple theft, the fraudulent agent must be the “dominant” or sole shareholder. As also demonstrated by *Federbush*, the acting agents were in complete control of the corporation and acted with an intent to evade corporate and personal income taxes.<sup>34</sup>

The sole shareholder of Sam Kong Fashions, a company engaged in the business of sewing garments as a subcontractor for others, also engaged in a pattern

of understating corporate income by failing to deposit customer checks in the corporate account, failing to provide all information and records to its return preparer and failing to maintain accurate records of gross receipts. Both the company and its owner were assessed with fraud under Code Sec. 6663.<sup>35</sup>

The fraudulent actions of the sole shareholder in *Reaves Livestock* were also imputed to the corporation. The owner engaged in a “check cashing scheme” over a period of four years to divert corporate income through the use of fictitious

payees, a bank account with a false social security number and ultimately by failing to inform the tax return preparer of 282 checks that should have been reported.<sup>36</sup> In *Door Control*, a husband and wife team who were owners, officers and directors of their

company, which serviced automatic doors, diverted corporate income to their personal use by depositing checks into their personal bank account and reimbursing personal expenses through the corporation. Both husband and wife and the corporation were assessed civil and criminal fraud penalties.<sup>37</sup> These cases provide a cautionary tale for minority shareholders of corporations that might be crippled by penalties caused by the fraudulent conduct of a more dominant shareholder.

There are, however, several Tax Court cases that refused to impute the fraud of an officer to the corporation. In those instances the officer was not a majority owner, and it was likely that the other owners were innocent and unknowledgeable of the fraud.<sup>38</sup> The Tax Court in *Simco* provided the following analysis in attributing the fraud of corporate officers to the corporation:

- whether the officer had sufficient control of the corporation to impute conduct to the corporation; and
- whether the wrongdoer was acting in behalf of or against the interests of the corporation.

In *Simco*, the wrongdoer was not the sole shareholder, did not dominate the corporation and acted against the interest of the corporation by diverting money to himself from scrap metal sales. The money would not have been otherwise available to him in the form of a dividend since he was not

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a controlling shareholder. The shareholder “was not acting in behalf of Simco when he sold scrap metal that belonged to the corporation, retained the proceeds, and failed to disclose the income to the corporation, its other shareholder and advisers, or the IRS.”

In *Asphalt Industries*, the corporation was not charged with fraud since the less active 50-percent shareholder had no knowledge of the unreported sums and did not authorize the fraud. The shareholder who did commit the fraud dominated the company’s operations which were the sale and application of road surfacing materials. Sales were kept off the official books and under analysis, and the innocent shareholder was in fact more like an outside investor.<sup>39</sup>

One might speculate what might have been the result if the wrongdoer’s interest in the company had been 51 percent or 75 percent. The result might have been more in line with *Dix*, *Federbush*, *Reaves* and *Door Control* with the conduct of the wrongdoer, a majority shareholder in each case, imputed to the corporation.

Whether or not the conduct of the dominant shareholder or officer arises to “fraud” that can be attributable to the corporation, rather than negligence or inadvertent underreporting, fraud is determined on a case-by-case basis with the following being some of the criteria for finding fraud:

- consistent underreporting of tax liabilities;
- concealing income from the tax preparer;
- diverting corporate funds to personal use;
- using the corporation to disguise personal nature of expenses;
- failing to cooperate with the IRS;
- failing to maintain adequate records;
- dealing in cash to conceal income; and
- using fictitious names or social security numbers.<sup>40</sup>

### **Additional Penalties**

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In addition to those penalties discussed so far, IRS may impose penalties under Code Sec. 7207 for the submission of fraudulent returns, statements or other documents<sup>41</sup> and Code Sec. 7201, which is a felony offense for willful attempt to evade or defeat any tax. The liability under Code Sec. 7201 carries a maximum fine of \$100,000 per individual (\$500,000 for a corporation) and/or imprisonment for not more than five years.

Providing a false W-2 to employees or filing a false W-2 is conduct prosecuted as a civil misdemeanor under Code Sec. 7204. The penalty for someone who

“willfully furnishes a false or fraudulent statement or who willfully fails to furnish a statement in the manner, at the time, and showing the information required under §6051, or regulations prescribed thereunder, shall, for each such offense, upon conviction thereof, be fined not more than \$1,000, or imprisoned not more than one year, or both.”<sup>42</sup>

In the Third Circuit case of *Gambone*, officers of the corporation were accountable under Code Sec. 7204 where circumstantial evidence demonstrated that they encouraged employees to underreport their income on W-2 statements by actively engaging in conduct that would support underreporting. However, the level of employer involvement in the fraudulent scheme allowed for felony prosecution of corporate officers under Code Sec. 7206, as well, for assisting in the preparation of false returns. The employer created false employee time cards, faulty bookkeeping of time records, booked wages as expense reimbursement and paid employees overtime from nonpayroll accounts to hide income and avoid paying employment taxes FICA and FUTA.<sup>43</sup>

Civil tax penalties may be imposed in the absence of fraudulent intent. To avoid those civil penalties the taxpayer has the burden of proving that any failure to comply with the tax laws was due to reasonable cause and not willful neglect.<sup>44</sup> Some relevant civil penalties include the failure to file tax returns or pay tax when due (Code Sec. 6651) and aiding and abetting the understatement of tax liability (Code Sec. 6701).

An accuracy penalty may be imposed for a substantial understatement of income if the underpayment is due to negligence or disregard of rules and regulations (Code Sec. 6662). “Negligence” means the “failure to make a reasonable attempt to comply” with the law or to “exercise ordinary and reasonable care in the preparation of a tax return” or “the failure to keep adequate books and records or to substantiate items properly.”<sup>45</sup> “Disregard” means “careless, reckless or intentional disregard” of IRS rules and regulations. The defense to this penalty is a demonstration of reasonable cause and good faith in reporting. The fraudulent underpayment of tax can result in a civil penalty as well equal as criminal penalty in an amount that can be as much as 75 percent of the underpayment attributable to fraud (Code Sec. 6663).

### **Transferee Liability**

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Shareholders and other transferees may be liable for corporate taxes, interest and penalties, jointly and

severally, to the extent of the assets they receive.<sup>46</sup> A responsible transferee can be the shareholder of a dissolved corporation or the successor of a corporation.<sup>47</sup> While the substantive basis for transferee liability is found in state law, Code Sec. 6901 provides IRS with the authority to seek collection against transferees of property for the unpaid tax liability of the transferor.<sup>48</sup>

Officers, shareholders and directors are subject to transferee liability if they receive corporate assets for less than fair consideration. A transfer to shareholders in fraud of creditors has been found to have occurred in a variety of circumstances. Some transfers are less obvious, e.g., excess compensation,<sup>49</sup> liquidating distributions,<sup>50</sup> bargain purchases from a corporation,<sup>51</sup> advances from a corporation,<sup>52</sup> redemption of stock<sup>53</sup> and an above-market sale to a corporation.<sup>54</sup> In one specific case a corporation was entitled to rental income on its assets. Because the rents were paid directly to the shareholders, they became liable as transferees of the rental income and subject to payment of tax on behalf of the corporation.<sup>55</sup> In another case, the corporation canceled indebtedness of the shareholders to the corporation resulting in insolvency, which under state law in that jurisdiction made them liable to corporate creditors. The shareholders became liable for corporate tax to the extent of the face value of those notes.<sup>56</sup>

Where the sale of a corporation's assets and stock was accomplished in a two-step transaction through an intermediary, the Tax Court in *Feldbaum* overlooked the intervening transaction and applied the doctrine of substance over form.<sup>57</sup> By collapsing the transaction into one, the court was able to find transferee liability.<sup>58</sup> The Court examined the degree to which the stockholders were willful and knowledgeable participants in the scheme of

corporate liquidation, the result of which ended in their receiving all of the assets of the corporation, which shortly thereafter became insolvent.

The justification for transferee liability was eloquently stated by the Florida District Court in *Price*: "where one person is the owner and in control of corporations with the power to do with their assets what he pleases, and where there is a large outstanding indebtedness of one of these corporations, the assets of such in corporation, when

insolvent or in liquidation, should be considered as a trust fund to be equitably handled for the benefit of the creditors rather than for the benefit of the stockholders."<sup>59</sup>

**Officers, shareholders and directors are subject to transferee liability if they receive corporate assets for less than fair consideration.**

### Conclusion

Personal liability for corporate taxes may come as a surprise to corporate employees, directors, owners, accountants and lawyers who expect to be insulated from corporate debts and misdeeds. It is critical that individuals who serve the corporation in these various capacities become aware of the potential for ultimate financial responsibility for tax and penalties leading to aggressive collection activity and liens on personal assets by the IRS. Because the conduct of controlling shareholders may be imputed to the corporation resulting in serious penalties, minority shareholders should be forewarned about their investment and the harm that can befall a corporation by acts of its controlling shareholders. Transferees of insolvent corporations should be aware of the potential for tax liability for corporate tax in situations that may surprise them. Ambitious salaries, cancellation of corporate notes or other events may trigger transferee liability. Overall, owners, officers, directors and employees who know or should know of the corporation's tax obligations and filing requirements may ultimately be held personally accountable.

### ENDNOTES

<sup>1</sup> Code Sec. 7343. "The term 'person' as used in this chapter includes an officer or employee of a corporation, or a member or employee of a partnership, who as such officer, employee or member is under a duty to perform the act in respect of which the violation occurs."

<sup>2</sup> Code Sec. 7203.

<sup>3</sup> *J. Tucker, Jr.*, CA-5, 82-2 USTC ¶9590, 686 F2d 230.

<sup>4</sup> *A. McGrath*, DC-OR, 2004-2 USTC ¶50,409; *R.W. Boyle*, SCt, 85-1 USTC ¶13,602, 469 US 241, 105 SCt 687.

<sup>5</sup> *Morin v. Frontier Bus. Techs.*, DC-NY, 288

BR 663 (2003); *A.C. Galletti*, SCt, 2003-1 USTC ¶50,455, 541 US 114, 124 SCt 1548.

<sup>6</sup> *In re American Biomaterials Corp.*, CA-3, 92-1 USTC ¶20,194, 954 F2d 919.

<sup>7</sup> *See id.*: "(i) if a corporation has lax internal controls or fails to secure competent external auditors to ensure the filing of timely tax returns and deposits

- and payment of taxes, it fails to show reasonable cause or absence of willful neglect and is itself liable for statutory penalties, notwithstanding its lack of vicarious liability for the criminal actions of its agents." 954 F2d, at 527.
- <sup>8</sup> *Universal Concrete Products Corp.*, DC-PA, 90-2 ustrc ¶ 50,440.
- <sup>9</sup> *M.D. Hastings*, CA-9, 949 F2d 399 (not released for publication), 1991 US App LEXIS 33067 (reported in full); cert. denied, SCT, 503 US 975, 112 SCt 1597.
- <sup>10</sup> *J. Aracri*, CA-2, 968 F2d 1512.
- <sup>11</sup> *P.C. Norwitz*, CA-9, 52-1 ustrc ¶ 9252, 195 F2d 127, cert. denied, 344 US 817, 73 SCt 11.
- <sup>12</sup> *W. Wolfe*, CA-6, 58-2 ustrc ¶ 9934, 261 F2d 158; *M. Lash*, CA-1, 55-1 ustrc ¶ 9344, 221 F2d 237, cert. denied, 350 US 826, 350 US 826, 76 SCt 55.
- <sup>13</sup> Code Secs. 3402 and 3403.
- <sup>14</sup> See also Reg §31.3403-1.
- <sup>15</sup> Code Sec. 7501(a).
- <sup>16</sup> Code Sec. 6672(a).
- <sup>17</sup> *Pediatric Affiliates*, DC-NJ, 2006-1 ustrc ¶ 50,201, aff'd, CA-3 (unpublished opinion), 2007-1 ustrc ¶ 50,477.
- <sup>18</sup> IRS Pub. 15.
- <sup>19</sup> *A. Hochstein*, CA-2, 90-1 ustrc ¶ 50,205, 900 F2d 543; *W.C. Kelver*, DC-CO, 98-2 ustrc ¶ 50,766, 984 FSupp 1352.
- <sup>20</sup> *A. Fiatarulo*, CA-2, 93-2 ustrc ¶ 50,627, 8 F3d 930, citing *D.L. Bowlen*, CA-7, 92-1 ustrc ¶ 50,098, 956 F2d 723.
- <sup>21</sup> *A. Tarlow*, DC-NY, 99-1 ustrc ¶ 50,338.
- <sup>22</sup> *In re G. Aboody*, BC-MA, 2000-2 ustrc ¶ 50,556, 250 BR 1.
- <sup>23</sup> *J.H. Harold*, CA-6, 2006-2 ustrc ¶ 50,525, 195 Fed Appx 358.
- <sup>24</sup> *In Re L. DeMarco, Jr.*, BC-FL, 99-1 ustrc ¶ 50,213, 258 BR 480.
- <sup>25</sup> *W.H. Thayer*, CA-3, 2000-1 ustrc ¶ 50,136, 201 F3d 214, cert. denied, 530 US 1244; *In Re I. Slodov*, SCT, 78-1 ustrc ¶ 9447, 436 US 238, 98 SCt 1778; *M. Ramirez*, DC-TX, 2003 U.S. Dist. LEXIS 22689.
- <sup>26</sup> *E. Neal*, CA-6, 96-2 ustrc ¶ 50,636, 93 F3d 219.
- <sup>27</sup> *J.C. Ryan*, CA-10, 63-1 ustrc ¶ 9306, 314 F2d 306; *S. Jasper*, DC-DE, 73-1 ustrc ¶ 9413, 352 FSupp 254.
- <sup>28</sup> CCA 200937025 (June 05, 2009) and *Hi-Q Personnel, Inc.*, 132 TC No. 13, Dec. 57,806 (2009); fraud of a shareholder or officer may be attributable to the corporation for purposes of Code Sec. 6651(f) penalties. See *Sam Kong Fashions*, infra note 35.
- <sup>29</sup> *Reaves Livestock, Inc.*, 73 TCM 3137, Dec. 52,109(M), TC Memo. 1997-283.
- <sup>30</sup> *I. Federbush*, 34 TC 740, Dec. 24,292 (1963), aff'd, CA-2, 64-1 ustrc ¶ 9107, 325 F2d 1.
- <sup>31</sup> See *Reaves Livestock, Inc.*, supra note 29; *Shokai, Alexander, Inc.*, CA-9, 94-2 ustrc ¶ 50,460 34 F3d 1480, aff'g, 63 TCM 1870, Dec. 47,947(M), TC Memo. 1992-41; *Door Control Services, Inc.*, 72 TCM 1253, Dec. 51,652(M), TC Memo. 1996-508.
- <sup>32</sup> *J.J. Dix, Inc.*, CA-2, 55-2 ustrc ¶ 9648, 223 F2d 436, cert. denied, SCT, 350 US 894, 76 SCt 150.
- <sup>33</sup> *Auerbach Shoe Co.*, 21 TC 191, Dec. 19,972 (1953), aff'd, CA-1, 54-2 ustrc ¶ 9673, 216 F2d 693.
- <sup>34</sup> Supra note 30.
- <sup>35</sup> *Sam Kong Fashions, Inc.*, 89 TCM 1503, Dec. 56,077(M), TC Memo. 2005-157; see *Federbush*, supra note 30.
- <sup>36</sup> See *Reaves Livestock, Inc.*, supra note 29.
- <sup>37</sup> See *Door Control Services, Inc.*, supra note 31.
- <sup>38</sup> *Simco Automotive Pump Co., Inc.*, 78 TCM 106, Dec. 53,461(M), TC Memo. 1999-235.
- <sup>39</sup> *Asphalt Industries, Inc.*, CA-3, 67-2 ustrc ¶ 9620, 384 F2d 229.
- <sup>40</sup> See *Door Control Services, Inc.*, supra note 31; see *Reaves Livestock, Inc.*, supra note 29.
- <sup>41</sup> Code Sec. 7207 states: "Any person who willfully delivers or discloses to the Secretary any list, return, account, statement, or other document, known by him to be fraudulent or to be false as to any material matter, shall be fined not more than \$10,000 (\$50,000 in the case of a corporation), or imprisoned not more than 1 year, or both. Any person required pursuant to section 6047(b), section 6104(d), or subsection (i) or (j) of section 527 to furnish any information to the Secretary or any other person who willfully furnishes to the Secretary or such other person any information known by him to be fraudulent or to be false as to any material matter shall be fined not more than \$10,000 (\$50,000 in the case of a corporation), or imprisoned not more than 1 year, or both."
- <sup>42</sup> Code Sec. 7204.
- <sup>43</sup> *J.A. Gambone, Sr.*, CA-3, 2003-1 ustrc ¶ 50,162, 314 F3d 163, aff'g DC-PA, 2001-2 ustrc ¶ 50,652, 167 FSupp 2d 803, cert. denied, SCT, 540 US 815, 124 SCt 67.
- <sup>44</sup> See *Boyle*, supra note 4.
- <sup>45</sup> FSB-2008-19 (Mar. 2008).
- <sup>46</sup> *R. Steinberger*, CA-9, 36-1 ustrc ¶ 9137, 81 F2d 1008; *A.G. Phillips Est.*, SCT, 2 ustrc ¶ 743, 283 US 589, 51 SCt 608; *N.B. Updike*, SCT, 2 ustrc ¶ 533, 281 U S 489, 50 SCt 367; *E.B. Glass Est.*, 55 TC 543, Dec. 30,476 (1970), aff'd, CA-5, 72-1 ustrc ¶ 9244, 453 F2d 1375; *D.E. Stansbury*, 104 TC 486, Dec. 50,603 (1995).
- <sup>47</sup> Code Sec. 6901; Reg. §301.6901-1(b).
- <sup>48</sup> *J.F. Stern*, SCT, 58-2 ustrc ¶ 9594, 357 US 39, 45, 78 SCt 1047; See *Glass Est.*, supra note 46.
- <sup>49</sup> *G.W. Renyx*, CA-2, 1933 CCH ¶ 9433, 66 F2d 260; *C.A. Lovejoy*, Dec. 12,559-H (1942); *W.D. Murphy Est.*, 8 TCM 745, Dec. 17,164(M) (1949); *J.W. Leach*, 21 TC 70, Dec. 19,938, acq. 1954-2 CB 4 (1953).
- <sup>50</sup> *D.R. Merriam*, 70 TCM 627, Dec. 50,880(M), TC Memo. 1995-432. Cancellation of shareholder loans without consideration was a transfer of assets to shareholders creating an insolvency and gave rise to transferee liability.
- <sup>51</sup> *W.T. Price, Inc.*, DC-FL, 43-1 ustrc ¶ 9346.
- <sup>52</sup> *S.W. Rubel*, CA-6, 1934 CCH ¶ 9562, 74 F2d 27.
- <sup>53</sup> *O. Botz*, CA-8, 43-1 ustrc ¶ 9374, 134 F2d 538.
- <sup>54</sup> Supra note 51.
- <sup>55</sup> *Western Union Telegraph Co.*, CA-2, 44-1 ustrc ¶ 9254, 141 F2d 774, cert. denied, SCT, 322 US 751, 64 SCt 1262; *S. Wilcox*, 16 TC 572, Dec. 18,155 (1951) aff'd sub nom *F. Bosworth*, CA-2, 52-1 ustrc ¶ 9179, 194 F2d 102; *R.L. Harrison Est.*, 16 TC 727, Dec. 18,206 (1951).
- <sup>56</sup> *R.E. Burdick*, 24 BTA 1297, Dec. 7349 (1931).
- <sup>57</sup> *Court Holding Co.*, SCT, 45-1 ustrc ¶ 9215, 324 US 331, 65 SCt 707; *E.F. Gregory*, SCT, 35-1 ustrc ¶ 9043, 293 US 465, 55 SCt 266.
- <sup>58</sup> *R. Feldman*, 102 TCM 612, Dec. 58,544(M), TC Memo. 2011-297.
- <sup>59</sup> Supra note 51.