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This book is just the beginning of your journey. In order to support your efforts in removing the stress of dealing with the IRS and get your business back on track, we have created a Payroll Tax Resolution Kit. It includes additional instructions, forms, and professional guidance to get your tax problem in check.

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- The Payroll Tax Collection Process Illustration – Where Are You in the Cycle?
- A Step-By-Step Guide to Completing Form 433-B& the IBTF-E/IBTF Processes
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DEDICATION

I dedicate this book first and foremost to my amazing wife and children for their constant love and dedication in all that I undertake.

Secondly, to those that will read this book. I'm talking about the amazing, hardworking men and women out there who juggle the daily stress of running a sub-contracting business, employing staff members, attempting to live a life outside of work, and fighting the IRS at the same time.

I tip my hat to you.

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INTRODUCTION

If your business owes money to the IRS, then this book is for you.

Whether you are going to tackle the problem yourself, or just want to have a better understanding of what your professional representative is doing (or, unfortunately, sometimes *not* doing), this book is your guide to understanding the whole process.

But we need to get on the same page regarding payroll taxes; hence, I have put forth a lot of information in the first few chapters that hopefully you already know and understand. All of you are approaching this book with a different level of understanding, so I felt it wise to lay some groundwork first.

For those of you that would like to skip right to tax resolution specific information, I would suggest starting in Chapter 4 where I reference different time components of taxes and then you can move into Chapter 5 and the rest of the book.

As a sub-contractor business owner, I know you do not have a lot of time to waste. You wear a lot of hats (sometimes quite literally) managing projects, handling the operations work, hiring and firing staff, and likely also on-site doing labor assignments as needed.

I know it keeps you busy all hours of the day.

Where possible, I will try to keep this information concise, easy to understand, and quickly digestible so you can get back to working on or in your business.

The IRS Code, Manual and Publications are typically anything but easy to understand and digestible, we have tried to do that here.

Before you jump right in, I do want to mention that I respect you for the work you do. I respect you for keeping your chin up in hard times and grinding it out day in and day out in a difficult industry and profession.

I certainly respect you for having the courage to pick up this book in hopes to get your business right with the IRS.

It is not an easy thing to do; yet here you are.

To every hardworking sub-contractor business owner out there that is currently facing the brunt of the IRS collection force, I plead with you to read this book and

face them head on. You deserve a chance to get things moving in the right direction. And that is what this book will help you do.

Your tax Business Partner,

Jacob Merkley, EA

CHAPTER 1: OVERVIEW OF THE IRS AND YOUR RIGHTS AS A TAXPAYER

Overview of the IRS

The Internal Revenue Service (IRS) is, in its simplest form, a collection agency. It collects tax revenue for the federal government of the United States of America. In addition to collecting tax revenue, it also administers the Internal Revenue Code, which is the broader federal statutory law of the United States.

That statutory law governs how and when individual taxpayers and businesses are expected to pay their taxes and report those taxes through tax filings. They also have the right to conduct an examination of past tax filings and amount paid, as well as trying to identify fraudulent taxpayers.

The IRS also governs how practitioners (like me) and other Enrolled Agents, tax attorneys, and CPAs represent their clients before the IRS.

With regards to their main role as a collection agency, the IRS collects these types of taxes for the federal government:

- Individual Income Tax
- Corporation Income Tax
- Employment Taxes (also known as Trust Fund taxes),
- Estate and Gift Taxes
- Excise Taxes

From time to time, the U.S. Congress passes certain tax measures that are added to the Internal Revenue Code and then are governed by the IRS. For example, when the Affordable Care Act (Obamacare) was put into law in 2010, the IRS was put in charge of administering the premium tax credits and enforcing the individual mandate requiring individuals to hold health insurance.

Another example is when the Tax Cuts and Jobs Act of 2017 (TCJA) drastically changed the revenue act of the United States that amended the Internal Revenue Code in 1986. Many elements of the tax code changed and were put into law for the 2018 fiscal year.

Most of the Internal Revenue Code is static but keeping up with minor tweaks like adjustments to tax deductions and credits can become quite the chore.

At the end of the day, knowing that the IRS is a collection agency is extremely important. It is vital to look at them from that perspective because it will shed some light and illuminate greater understanding into what they do and why they do it.

The good news is that there is a specific voice at the IRS that will help protect your rights if you do not want (or are not able) to utilize a professional representative before the IRS.

Your Voice at the IRS

The IRS Taxpayer Advocate Service is your voice at the IRS. The Office of the Taxpayer Advocate is an independent office of the IRS. They work together closely, but it is under different supervision than the IRS and acts in a completely different manner than the IRS that you are familiar with.

The Taxpayer Advocate Service (TAS) is predominantly used to support and assist taxpayers in resolving their problems with the IRS. They can help:

1. Individuals and businesses with tax problems that are creating financial difficulty
2. Those that have attempted to resolve tax problems through conventional ways and have not been able to reach a resolution or conclusion
3. By providing a specific Advocate that gets assigned to your case and will work with you every step of the way
4. Discover large-scale or systemic problems that affect many taxpayers and work to get those problems corrected.

Your Rights as A Taxpayer

You have many rights as a U.S. taxpayer that you may not be aware of. The IRS has an entire Taxpayer Bill of Rights that we will go through briefly here:

1. The right to be Informed.

Taxpayers have a right to know what needs to be done to comply with the current tax laws. Clear explanations of the law, procedures, instructions, should be provided. You also have the right to be informed of IRS decisions regarding your tax account along with outcome explanations.

2. *The right to quality service.*

You have the right to receive professional and courteous assistance while dealing with the IRS. You should be spoken to in a way that is easy to understand, and to receive understandable communication from the IRS. Lastly, you should have a way to file complaints about service that is less than good.

3. *The right to pay no more than the correct amount of tax.*

Taxpayers should never be paying more than what they are legally obligated to pay as their official tax liability. The IRS should apply all tax payments properly and can be held accountable to this.

4. *The right to challenge the IRS's position and be heard.*

You can raise objections and provide additional documentation that will help challenge the IRS's position regarding a formal IRS action or proposed action. You can expect the IRS to consider your challenge in a timely way and will receive a response in a timely manner.

5. *The right to appeal an IRS decision in an independent forum.*

Taxpayers are entitled to an impartial administrative appeal of most IRS decisions and can utilize the Office of Appeals' decision in tax matters. Taxpayers generally also have the right to take their case to court.

6. *The right to finality.*

You have the right to know the statutory time limits regarding filings, taxes, audits, collection, and so forth. Taxpayers also have the right to know the maximum amount of time they must challenge the IRS's position and when they have completed an audit.

7. *The right to Privacy.*

Privacy is a big deal, especially at the IRS. Inquiries, examinations, or enforcement action will comply with the law and be *no more intrusive than necessary*. They will respect all due process rights.

8. *The right to confidentiality.*

You have the right to confidentiality regarding any information you provide the IRS and will not be disclosed unless authorized by the taxpayer or by law. The IRS will

investigate and take appropriate action against employees, return preparers, and others who wrongfully use or disclose your information.

9. The right to retain representation.

Taxpayers have the right to retain an authorized representative of their choice to represent them in any dealings with the IRS. Those that are authorized representatives are Enrolled Agents (EA), tax attorneys, and CPA's. If you cannot afford to hire a representative, you may be eligible for assistance from a Low-Income Taxpayer Clinic.

10. The right to a fair and just tax system.

Lastly, you have the right to expect the tax system to consider all facts that might affect liabilities, ability to pay, ability to provide information timely, and so on. Taxpayers have the right to receive assistance from the Taxpayer Advocate Service.

Tax Resolution Resource

If you would like to get in touch with the TAS, you can call them toll-free at 877-777-4778.

Additionally, here are several resources that will provide additional information about this unique, independent office within the IRS:

Taxpayer Advocate Services - <https://taxpayeradvocate.irs.gov/>

Local Locations - <https://www.irs.gov/advocate/local-taxpayer-advocate>

Taxpayer Bill of rights - <https://taxpayeradvocate.irs.gov/About-TAS/Taxpayer-Rights/What-the-Taxpayer-Bill-of-Rights-Means-for-You>

Tackle Your Payroll Tax Debt

Do not want to deal with the IRS yourself? Hire our specialized team. We *only* work with sub-contractor businesses to resolve specific tax situations and are experts in resolving your case with the IRS.

Discover your tax resolution options now:

www.westerntaxalliance.com/discover



CHAPTER 2: EMPLOYER TAX INTRODUCTION

Let us lay down a few ground rules.

Rule #1

As a business owner, you should know all of this already. For those that do not, this chapter will be a nice (or not so nice) nudge to get your affairs in order. If you do not have your employer “tax ducks in a row”, the IRS will certainly find out.

Getting your business “house” in order is the first step to correcting your tax debt.

We will go through:

1. The requirements for having an EIN
2. Withholding from employees’ wages
3. Depositing taxes
4. Reviewing definitions of employees and taxable versus nontaxable wages

Rule #2

References in this chapter to “income tax” are specifically referencing *federal* income tax, not state or local taxes.

Rule #3

In many instances, specifics have been left out of this discussion. The goal of this chapter to provide a baseline of information about employment taxes so that we are all on the same page. Different employee classifications, reporting standards, etc. may differ in certain circumstances.

Payroll Tax Basics

When you pay your employees through payroll, you do not pay them all the money they have earned. As their employer, your responsibility is to withhold (except FUTA), deposit, report, and pay the following employment taxes: Federal income tax, social security tax, Medicare tax, and FUTA tax. The income tax, social security, and Medicare must be directly withheld from each paycheck.

All three of these taxes are to be paid, *by you*, to the U.S. Treasury. Your employees are trusting that you will pay those withheld taxes to the U.S. Treasury through

federal tax deposits. This is the main reason that these withheld taxes are called *trust fund taxes*.

If these three taxes are not withheld or are not deposited or paid to the U.S. treasury, you may be assessed the Trust Fund Recovery Penalty (see Chapter 5: The Nasty Things the IRS Legally Can Do to You). This is a penalty that can be assessed to you individually. Yes, you read that correctly. The IRS can pierce through the corporate and business veil to assess penalties directly to individuals.

Employer Identification Numbers (EIN)

If you are required to report employment taxes, you need an Employer Identification Number (EIN).

The EIN is a nine-digit number that is issued by the IRS. The digits are arranged as follows: 00-0000000 and are used to identify the tax account of employers and certain others who have no employees.

Your EIN is to be used on all items that you send to the IRS and the Social Security Administration to identify that it is coming from your business.

You can apply for an EIN by these methods:

- **Online:** irs.gov/ein
- **Fax or Mail to the IRS:** Form SS-4
- **By Phone** (for businesses created outside the U.S.) – 267-941-1099

Rules and general tips for EINs.

1. Do not use an SSN in place of an EIN.
2. You should only have one EIN for each business.
3. If you have more than one and are not sure which one to use, call 800-829-4933.
4. If you take over another employer's business, do not use that employer's EIN.
5. If you have applied for an EIN, but your EIN hasn't been issued by the time a return is due, file a paper return and write "Applied For" and the date you applied for in the space shown for the EIN number.

Who Are Employees?

There are four types of workers, but in the sub-contracting industry, there are mainly two types of workers that you will deal with. Knowing the distinction between the types of workers will help you determine how you treat payments you make to them:

1. An independent contractor
2. A common-law employee

Independent Contractors

Those who offer their services to the general public. Also, you (the person for whom services are performed) do not have the right to control the means and methods of accomplishing the work performed.

How to treat payment: They are not your employees; therefore, you pay them as if they are a separate business. They are required to pay their own taxes.

Common-Law Employees

Those who perform services for you and to which you have the right to control what will be done and how it will be done. This is regardless if you give the employee freedom of action, but that you can control the details of how the services are performed. It does not matter if they work full or part time.

How to treat payment: These are employees. You must pay them like typical employees, withholding taxes as part of the trust fund.

***Special Note:** As a rule of thumb, you will generally be liable for income tax, social security tax and Medicare tax if you do not deduct and withhold these taxes because you treated an employee as a nonemployee.

Wages and Other Compensation

There are many different components of wages and compensation and some include specific rules, but we will keep this extremely basic.

Wages subject to federal employment taxes generally include all pay you give to an employee for services performed, by cash or other forms: salaries, vacation allowances, bonuses, commissions, deferred compensation, and taxable fringe benefits.

Tackle Your Payroll Tax Debt

If your business pays employees in a form other than cash, you are said to have paid them “in kind”. This could include goods, lodging, food, clothing, or services. Most often, the fair market value of the “in kind” payment at the time they are provided is what is subject to federal income tax withholding and social security, Medicare, and FUTA taxes.

***Special Note:** The exception comes in the form of reimbursable business expenses that the employee paid *on behalf* of the business. These are reimbursed, tax free back to the employee.

Are They Taxable?

There are several different payments to employees that may or may not be taxable. I have specified a few common ones below:

Meals and Lodging

Not taxable income and not subject to taxes *if* they are furnished for the employer’s convenience and on the employer’s premises.

Lodging is treated the same as meals if it is for the employer’s convenience and on the employer’s premises as a condition of employment.

“Convenience of the employer” means that you have a valid reason for providing these items, other than to provide additional compensation to the employee.

Health Insurance Plans

Not taxable *if* the business pays the cost of an accident or health insurance plan for employees, including an employee’s spouse and dependents.

This exclusion includes qualified long-term care insurance policies.

***Special Note:** The exception to this is that the value of insurance benefits for 2% or more S Corporation owners must be included in wages.

Health savings accounts (HSAs) and medical savings accounts (MSAs).

Not taxable, *if* the business contributions to an employee’s HSA or Archer MSA if at the time of payment, it is

- Reasonably assumed it will be excluded from income to the employee and

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