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CORPORATE OFFICER A “RESPONSIBLE
PERSON” FOR UNPAID EMPLOYMENT TAXES
DESPITE NOT HAVING CHECK SIGNING
AUTHORITY.

The Tenth Circuit upheld a determination that an individual was a responsible person for purposes of liability for unpaid employment taxes despite the fact that the individual had no authority to sign checks for the employer corporation. [United States v. Lindsey, 48 Fed. Appx. 302 \(U.S. App., 2002\).](#)

[Section 6672 of the Internal Revenue Code](#) permits the government to collect from a "responsible" person who willfully fails to pay employment taxes an amount equal to the unpaid taxes. [26 U.S.C. § 6672](#). [Section 6671\(b\)](#) defines "person," for purposes of [§ 6672](#), as including "an officer or an 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." As a result, an individual responsible for the collection and payment of a corporation's trust fund taxes who willfully fails to do so is personally liable for the amount of the unpaid taxes. [Slodov v. United States, 436 U.S. 238, 243, 56 L. Ed. 2d 251, 98 S. Ct. 1778 \(1978\).](#)

In the [Lindsey](#) case, the officer was a founder and 50 percent shareholder of a corporation that leased truck drivers to an operating company owned by the officer and his partner. The corporation's only financial obligations were payroll and federal employment taxes. By having total control over how much money the operating company would pay to the corporation, the officer had substantial financial control over the corporation. He also authorized and decided whether federal employment tax deposits would be made into the trust account. The officer contended that because he lacked authority to write checks on the corporation's bank account he could not be responsible for paying the employment taxes and for willfully failing to do so. The issue on appeal was whether check-signing authority on a corporate account was a necessary predicate for demonstrating both personal responsibility and willfulness under 26 U.S.C.S. § 6672(a). Check-signing authority was only one of many non-exclusive factors that courts consider in making the "responsible person" determination under § 6672. The critical inquiry is whether the officer had the effective power to pay the taxes owed. The Tenth Circuit found that it is not

necessary for the officer himself to write the check, so long as the individual has significant authority and control over the corporation's finances.

The Third Circuit has addressed the issue of "responsible person" using the same analysis. Two conditions must be satisfied before liability can attach under [§ 6672](#): (1) the individual must be a "responsible person," and (2) his or her failure to pay the tax must be "willful." [Greenberg v. United States, 46 F.3d 239, 242 \(3d Cir. 1994\)](#). Courts consider several factors in determining whether an individual is "responsible" for collecting and paying a corporation's taxes, including: (1) the contents of the corporate bylaws; (2) the ability to sign checks on the company's bank account; (3) the signature on the corporation's tax returns; (4) the payment of other creditors; (5) the identity of officers, directors and principal stockholders in the corporation; (6) the identity of individuals in charge of hiring and discharging employees; and (7) the identity of individuals in charge of the firm's financial affairs. [Brounstein v. United States, 979 F.2d 952, 954-55 \(3d Cir. 1992\)](#). Section 6672 does not confine liability for the unpaid taxes only to the single officer with the greatest or the closest control or authority over corporate affairs. In fact, the statute expressly applies to "any" responsible persons, not just to the person most responsible for the payment of the taxes. As for the second prong of the analysis, willfulness, for purposes of § 6672, a voluntary, conscious, and intentional act. Generally, any payment to other creditors, including the payment of net wages to the corporation's employees, with knowledge that the employment taxes are due and owing to the government, constitutes a willful failure to pay taxes. If a court determines that a person meets both conditions, i.e., "responsible person" and willfulness, that person will be personally liable for the unpaid employment taxes.

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