



## Tax Reduction Letter

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### Internal Revenue Manual Section 1.2.14.1.3 (06-09-2003)

#### Policy Statement 5-14 (Formerly P-5-60)

2. Trust Fund Recovery Penalty Assessments: The trust fund recovery penalty, applicable to withheld income and employment (social security and railroad retirement) taxes or collected excise taxes, will be used to facilitate the collection of tax and enhance voluntary compliance. If a business has failed to collect or pay over income and employment taxes, or has failed to pay over collected excise taxes, the trust fund recovery penalty may be asserted against those determined to have been responsible and willful in failing to pay over the tax. Responsibility and willfulness must both be established. The withheld income and employment taxes or collected excise taxes will be collected only once, whether from the business, or from one or more of its responsible persons.
3. Collection of the withheld income and employment taxes or collected excise taxes is achieved when the Service's right to retain the amount collected is established.
4. **Determination of Responsible Persons**
5. Responsibility is a matter of status, duty, and authority. Those performing ministerial acts without exercising independent judgment will not be deemed responsible.
6. In general, non-owner employees of the business entity, who act solely under the dominion and control of others, and who are not in a position to make independent decisions on behalf of the business entity, will not be asserted the trust fund recovery penalty. The penalty shall not be imposed on unpaid, volunteer members of any board of trustees or directors of an organization referred to in section 501 of the Internal Revenue Code to the extent such members are solely serving in an honorary capacity, do not participate in the day-to-day or financial operations of the organization, and/or do not have knowledge of the failure on which such penalty is imposed.
7. In order to make accurate determinations, all relevant issues should be thoroughly investigated. An individual will not be recommended for assertion if sufficient information is not available to demonstrate he or she was actively involved in the corporation at the time the liability was not being paid. However, this shall not apply if the potentially responsible individual intentionally makes information unavailable to impede the investigation. Field investigations to determine the trust fund recovery penalty liability will be conducted promptly to enhance access to relevant information and reduce burden to taxpayers.
8. Absent statute considerations, assertion recommendations normally will be withheld in cases of approved and adhered to business installment agreements and bankruptcy payment plans. To the extent necessary, information will be gathered to support a possible assessment in the event the agreement is defaulted.
9. **Application of Payments in Determining Trust Fund Recovery Penalty Assessments (effective for assessments where notices of TFRP liability are issued on or after June 19, 2000 and for any undesignated payment made on or after January 1, 2003)**
10. Any payment made on the business account is deemed to represent payment of the nontrust fund portion of the tax liability (e.g., employer's share of FICA) unless designated otherwise by the taxpayer. The taxpayer, of course, has no right of designation of payments resulting from enforced collection measures. To the extent partial payments exceed the nontrust fund portion of the tax liability, they are deemed to be applied against the trust fund portion of the tax liability (e.g., withheld income tax, employee's share of FICA, collected excise taxes). Once the nontrust fund and trust fund taxes are paid, the remaining payments will be considered to be applied to assessed fees and collection costs, assessed penalty and interest, and accrued penalty and interest to the date of payment.
11. **Small Business Administration**
12. When employees of the Small Business Administration perform duties in accordance with the regulations of the agency, the Service will not consider assertion of the liability provided by IRC 6672 or 3505 against those Small Business Administration employees in any past, current or future cases arising out of these duties.