



Hospital CEO Liable for Unpaid Payroll Taxes

On August 3, 2009, a federal district court decided the case of *Doulgeris v. U.S.*, No. 8:08-cr-282-T-24-MAP (M.D. Fla.) and found a hospital Chief Executive Officer (CEO) personally liable for almost 2 million dollars in unpaid payroll taxes. The individual found liable had been appointed by a hospital management group to serve as an interim hospital president and CEO while the hospital was undergoing bankruptcy reorganization.

According to federal law, when a person who is responsible for paying to the government funds withheld from employees for the purpose of paying payroll taxes willfully fails to turn those funds over to the government, he may be held personally liable for the amount that is not paid.¹ The government has the initial burden of demonstrating that the person in question was a responsible person under the law. Generally, the CEO and chief financial officer of an organization are presumed to be responsible persons. During the trial of the case, the government filed a motion that the CEO was a responsible person as a matter of law and it was granted. The federal district court, therefore, did not discuss the responsibility issue.

If the government meets the initial burden, the responsible person must then show that he did not act willfully in failing to pay over taxes.² In deciding whether the CEO had acted willfully, the court explained that a person acts "willfully" if he voluntarily, consciously, and intentionally uses, or causes to be used, funds withheld for payroll taxes for purposes other than the payment of these taxes.³ Willful conduct is demonstrated when it is shown that the officer used the money withheld for payroll taxes to pay suppliers or other creditors when he knew that payroll taxes were due or if he failed to investigate or correct mismanagement after being notified that payroll taxes were due and outstanding. In other words, an officer cannot absolve himself of that responsibility by leaving it for someone else to fulfill.

Here, there was no dispute that the CEO: (1) knew the payroll taxes collected from employees had not been turned over to the government in their entirety during the time period in question; (2) had the authority to make payments on behalf of the hospital; and (3) signed checks totaling over 2.9 million dollars paying other creditors, rather than the government, when he knew the payroll taxes were delinquent. The court concluded that it was clear the CEO willfully enabled hospital funds to be used for purposes other than paying taxes owed to the government, and ordered the CEO to pay the outstanding amount of \$1,935,204.33.

This case makes it clear that the ultimate responsibility for paying over outstanding payroll taxes rests with executive leadership and the CEO. The facts illustrate that even well-meaning hospital executives could potentially be found liable for significant amounts of money in times of bankruptcy or other financial hardships. It is therefore imperative that regardless of which individual is ultimately responsible for paying tax payments, hospital leadership and CEOs must pay close attention and confirm that such taxes are being paid on a timely basis.

¹*Doulgeris v. U.S.*, citing 26 U.S.C. § 6672.

²*Doulgeris v. U.S.*, citing *Thibodeau v. U.S.*, 828 F.2d 1499, 1503 (11th Cir. 1987).

³*Doulgeris v. U.S.*, citing *Malloy v. U.S.*, 17 F.3d 329, 332 (11th Cir. 1994).

Upcoming Health Care Briefings

Recovery Audit Contractor Audits: What you Need to Know

The Mississippi State Medical Association, Phelps Dunbar LLP, and the Mississippi Academy of Family Physicians will host a series of briefings to bring physicians up to date on recent developments relating to the Recovery Audit Contractor (RAC) Audits, including how physicians can prepare for the RAC Audits, as well as the process for appealing overpayment determinations. The Featured Speaker will be Jeff Moore – Phelps Dunbar Partner, Mississippi Health Care Practice. Join us to learn how the RAC Audits will affect your practice and how you can prepare for them.

AUGUST 19

Biloxi, Mississippi - Biloxi Community Center, 591 Howard Ave. 5:30-6:45 p.m.

AUGUST 21

Kosciusko, Mississippi - Attala Educational Center 7:30-8:45 a.m.
254 Highway 12 W

AUGUST 20

Hattiesburg, Mississippi - Hattiesburg Clinic, 415 S. 28th Ave. 7:30-8:45 a.m.

Meridian, Mississippi - East MS Business Development Corp. 12:30-1:45 p.m.
1901 Front Street, Suite A

Jackson, Mississippi - Old Capital Inn, 226 N. State St. 5:30-6:45 p.m.

To Register: Contact Becky Wells at beckywells@MSMAonline.com or 601-853-6733.



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If you have any questions or desire additional information, please contact our Health Care Industry Practice Coordinator Jeff Moore.



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