CONSTRUCTION AND CHECK-CASHING COMPANIES: A MATCH MADE IN TAX HELL

If your construction company uses a check-cashing business, then you might soon find yourself in the crosshairs of Uncle Sam. The Internal Revenue Service ("IRS") and federal prosecutors are cracking down on construction companies that attempt to conceal the true amount of their gross receipts and payroll through the use of check-cashing businesses. Not only could businesses face IRS audits, tax collection action, and the imposition of substantial interest and penalties, individuals who own or operate these construction businesses could face federal or state criminal prosecution and substantial prison time.

On June 5, 2015, Eric Anderson, the owner of three construction companies in Dix Hills, New York, learned this the hard way when he was sentenced to serve eighteen months in federal prison and ordered to pay $1,080,222 in restitution to the IRS after being caught using a commercial check-cashing service to conceal the true gross receipts of his construction business and his practice of paying employees under the table. Over the course of three years, Anderson used a check cashing service to cash more than $10.5 million in checks payable to his construction companies which represented revenues of the business. Anderson concealed his check cashing activities from his tax return preparer so that the income was not included on the companies' tax returns. Anderson then used a portion of that cash to pay his employees under the table, thereby failing to collect or pay over to the IRS quarterly employment taxes due on his employees' cash wages. Even worse, after learning of the criminal investigation, Anderson shredded business records and lied to IRS investigators about his use of the check cashing service. In addition to federal prison time and restitution, Anderson was ordered to serve three years of supervised release following his release from prison.

Anderson is not alone. That same day, Tariq Tahir, the owner and operator of DNS Construction Corporation in Yonkers, New York was sentenced in connection with his own fraudulent schemes involving multiple check-cashing businesses. From 2006 through 2008, Tahir carried out two schemes to avoid paying taxes. First, in an attempt to conceal his company's true revenue from federal and state tax authorities, he cashed checks at multiple check-cashing businesses in Manhattan and Brooklyn, rather than depositing those checks into company bank accounts. The IRS, however, uncovered Tahir's behavior. Tahir also paid his employees primarily in cash and did not report these salary payments on his company's employment tax returns in hopes that this practice would escape detection. It did not. On June 5, 2015, 67 year-old Tahir was ordered to pay more than $800,000 in restitution to the IRS and the New York State Department of Taxation and Finance.

Anderson and Tahir are just a few examples of steadily increasing efforts by federal and state tax authorities to audit and prosecute construction companies and check-cashing businesses, considered by many in the tax profession to be low-hanging fruit ripe for the picking by tax authorities. Further, not only construction company owners and operators place themselves at risk of prosecution. In August 2010, the owner of a Sorrento, Florida grocery store was sentenced to two years in prison for her involvement in cashing over $4 million in checks for a construction company that was attempting to evade payroll taxes.

There are many ways for construction company owners and operators to get caught in the IRS crosshairs when using check-cashing companies in an attempt to underreport revenues or conceal the payment of wages, therefore avoiding the payment of employment taxes. Under federal law, a business owner could be charged with tax evasion, which carries a maximum penalty of five years in jail and a $250,000 fine. To establish the crime of tax evasion, the government must prove that the business owner engaged in an act to evade or defeat tax. This would include cashing checks rather than depositing them into a business account and paying employees in cash. The government would also have to prove that the conduct resulted in tax due and owing to the government and that the defendant acted willfully, in that his actions were illegal and he proceeded anyway.

Individuals operating construction companies in this manner could also be targeted by prosecutors for failing to collect, account for, or pay over employment taxes, which is also a felony which carries a maximum penalty of five years in federal prison and a fine of $250,000. Federal prosecutors are encouraged to consider mail and wire fraud charges where the defendant embezzles or fails to pay over the employee withholding portion of the employment taxes. These charges each carry a substantially larger maximum penalty of 20 years in federal prison and a fine of $250,000.

Another weapon in the federal government's arsenal is the so-called "tax perjury or fraud statute." Federal prosecutors can use this statute to charge criminal violations based on the filing of false or fraudulent tax returns. This offense carries a maximum penalty of three years in prison and a $250,000 fine. Tahir was convicted of filing false corporate income tax returns on behalf of his construction company.

The implications of such actions are not limited to federal prosecution. Maryland has demonstrated increased interest recently in prosecuting individuals for tax offenses. Further, construction companies and the individuals owning and operating them could face severe financial consequences if such behavior is uncovered as part of an IRS or state audit, including the assessment of additional taxes, substantial penalties and large amounts of interest, which is charged at a usurious 13% by the Comptroller of Maryland. If a construction company has underreported revenues or wages, it may be a good idea to speak with a tax professional about Maryland's newly announced Tax Amnesty Program to avoid penalties and reduce interest.

The exposure for underreporting gross receipts and payroll taxes is broad and the criminal and civil consequences can be severe. The IRS and Department of Justice have increased their investigations and prosecutions of construction companies and their owners/operators. Authorities are paying particular attention to the use of check-cashing companies to conceal revenues and the payment of wages in cash.

Leigh Kessler, Esq. &
Giovanni V. Alberotanza, Esq., LL.M., M.B.A.
Rosenberg Martin Greenberg, LLC

If you would like to discuss the IRS's focus on underreporting of revenue and payroll taxes, or other tax issues related to the construction industry, or would like to have your current practices reviewed for potential exposure, please contact Leigh Kessler at 410.649.4991 or lkessler@rosenbergmartin.com or Giovanni V. Alberotanza at 410.649.4990 or galberotanza@rosenbergmartin.com.