

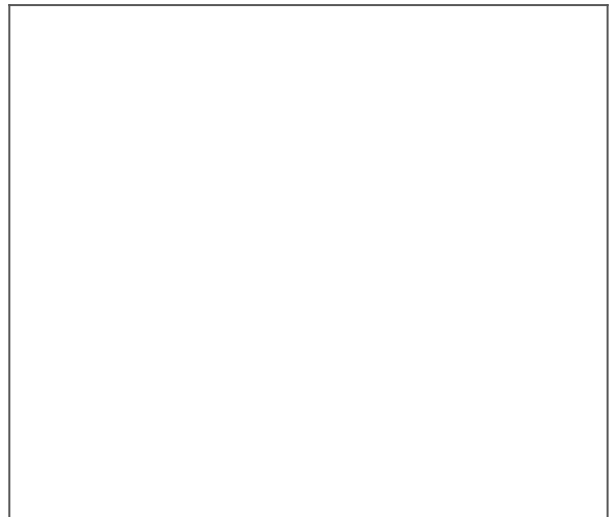
Directors Beware

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published 06/09/2010

Personal Tax Liability Looms

The recent decision of the Tax Court in *Williamson v. The Queen* is a good reminder of the personal obligations directors have under the Income Tax Act (ITA) for remitting employee source deductions and the potential harsh consequences for failing to live up to those obligations. In *Williamson*, the director's company had entered into a banking arrangement with another company to pay certain amounts on behalf the other company due to the other company's credit problems. These amounts included payroll payments for the other company's employees. In a prior decision of the Tax Court, the Appellant's company was found to be a deemed employer of these employees by virtue of the payment arrangement and so was required to remit the source deductions. Ultimately, the Appellant was assessed personally as a director pursuant to subsection 227.1(1) of the ITA .



The director relied on the "due diligence defence" under subsection 227.1(3) of the ITA claiming she believed her company to be a bank for the other company, not an employer, and that she "exercised the degree of care, diligence and skill to prevent the failure that a reasonably prudent person would have exercised in comparable circumstances." However, the Court noted the significant legal hurdle she had in establishing due diligence since she was an inside director who was actively involved in the business, and that ignorance of a director's potential liability under the ITA is no defence. Justice Hershfield relied on the following quote from the *Soper* decision of the Federal Court of Appeal which summarized a director's positive duty to act under the ITA:

In my view, the positive duty to act arises where a director obtains information, or becomes aware of facts, which might lead one to conclude that there is, or could reasonably be, a potential problem with remittances...

Put another way, if there's smoke, a director better check for fire. Unfortunately for the unsuspecting director, sometimes the smoke is not so easily seen.

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