



Testimony

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DEBT COLLECTION

Barring Delinquent Taxpayers From Receiving Federal Contracts and Loan Assistance

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Debt Collection: Barring Delinquent Taxpayers From Receiving Federal Contracts and Loan Assistance

Mr. Chairman and Members of the Subcommittee:

We are pleased to be here today to assist the Subcommittee in its consideration of H.R. 4181, a bill to amend Title 31, United States Code, to prohibit delinquent federal debtors, including delinquent taxpayers, from being eligible to contract with federal agencies. The bill would also generally preclude delinquent taxpayers from obtaining federal loans (other than disaster loans) or loan insurance or guarantees.

Our remarks today are based on the work we did at the request of the Subcommittee on unpaid payroll taxes and associated tax penalties and our past and ongoing audits of the Internal Revenue Service (IRS) and federal acquisition and loan assistance processes.

We support the concept of barring delinquent taxpayers from receiving federal contracts, loans, and loan guarantees and insurance. In fact, in 1992, we said Congress should consider whether tax compliance should be a prerequisite for receiving a federal contract.¹ However, with H.R. 4181, we believe there are significant implementation issues, particularly with respect to the federal acquisition process, and we offer recommendations for a phased-in implementation of the provisions and additional standards for when delinquent taxpayers should be barred. Our statement makes the following points:

- Taxpayers owe the federal government billions of dollars in delinquent taxes. For example, as we reported to this Subcommittee last August, as of September 30, 1998, nearly 2 million businesses owed \$49 billion in cumulative delinquent unpaid payroll taxes and 185,000 individuals responsible for the nonpayment of delinquent payroll taxes owed \$15 billion in trust fund recovery penalties (TFRP).² The majority of these unpaid payroll taxes and associated TFRPs are not likely to be collected for various reasons, including the delinquent taxpayers' inability or unwillingness to pay. A significant number of both businesses with delinquent unpaid payroll taxes and individuals with outstanding TFRPs also receive substantial payments from the federal government, either for

¹Tax Administration: Federal Contractor Tax Delinquencies and Status of the 1992 Tax Return Filing Season (GAO/T-GGD-92-23, Mar. 17, 1992).

²IRS assesses a TFRP against an individual, such as a corporate officer, who it determines was willful and responsible for not forwarding to the government the federal payroll taxes withheld from employees' salaries. The \$49 billion in cumulative unpaid payroll taxes includes about \$19 billion in unpaid tax assessments and another \$30 billion in penalties and interest. The \$15 billion in TFRPs includes initial assessments of about \$9 billion and accumulated interest of about \$6 billion.

federal benefits or loans or for other payment purposes, such as under federal contracts for goods and services.

- IRS currently does not have the systems that would enable it to consistently provide federal agencies with timely, accurate, and complete information on an individual's or business' tax delinquency status. IRS is undergoing a major systems modernization program, which will likely take several more years to complete. If these modernization efforts are successful, IRS may be able to provide agencies with timely, accurate, and complete tax delinquency status information that could be used as a basis for denying federal loan assistance and contracts to delinquent taxpayers.
- The Office of Management and Budget (OMB) currently directs administrators of federal loan, loan insurance, and loan guarantee programs to determine whether an applicant has any type of delinquent federal debt, including a tax debt, for the purpose of determining creditworthiness. However, in regard to tax debts, agencies may not always be complying with this directive. Moreover, because of IRS' systems limitations, prior to full implementation of H.R. 4181, a pilot test involving one or more federal loan assistance programs could help determine whether IRS' current systems can effectively and efficiently handle the volume of tax delinquency status requests that it would receive. The pilot could also help IRS develop and build into its modernization efforts the requirements for a real-time tax delinquency check program.
- In recent years, both Congress and the administration have attempted to streamline the government procurement system in an effort to reduce the cost of the system for both the government and its contractors. In large part, these efforts have involved eliminating administrative requirements not central to the fundamental purpose of the procurement system: purchasing best-value goods and services in an efficient, cost-effective manner. Unlike federal loan assistance programs, OMB does not direct federal agencies to check on a prospective contractor's tax debts. Thus, H.R. 4181 could add considerable burden to the acquisition process both in terms of costs and time. However, this burden could eventually be decreased if IRS' modernization efforts result in a system that gives contracting agencies an almost immediate response to their requests for information on the delinquency status of prospective contractors. To help reduce the burden on the acquisition process, imposition of H.R. 4181's barring requirements on the acquisition process could be deferred until IRS has an effective and efficient tax delinquency check program.

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- Generally, with the exception of taxpayers that have made arrangements with IRS to make payments on their tax debts, H.R. 4181 would deny loan assistance or contracts to all taxpayers with tax debts that have been outstanding for more than 90 days after the date the tax was assessed. As a starting point, the 90 days after assessment standard is not unreasonable. However, this provision may be too restrictive because it may not allow enough time for delinquent taxpayers to fully exercise their due process rights for settling their tax debts. Additionally, after 90 days from the date of the tax assessment, some taxpayers could still be in the process of negotiating payment agreements to resolve their delinquencies. To help ensure that taxpayers are not barred from receiving federal contracts or loan assistance while they are negotiating payment agreements, the Secretary of the Treasury could prescribe additional standards for IRS to use in determining when a person has a tax debt in delinquent status for purposes of barring under H.R. 4181.

H.R. 4181 Would Bar Delinquent Taxpayers From Obtaining Federal Loan Assistance or Contracts

H.R. 4181 would amend the Debt Collection Improvement Act to extend to delinquent tax debtors the bar that currently prohibits the award of federal loans, loan guarantees, and loan insurance to nontax debtors whose debts are in delinquent status. The bill would also prevent an agency from entering into a contract with any “person” who owes a debt (nontax or tax) to a federal agency that is in delinquent status. The bill defines “person” to include a partnership with a partner who has been assessed a penalty for unpaid payroll taxes under section 6672³ of the Internal Revenue Code of 1986. In addition, the definition of “person” includes a corporation with an officer or a shareholder who holds at least 25 percent of the outstanding shares of corporate stock who has been assessed a penalty under section 6672.

The bill specifically excludes from the barring provision any contract that is entered into for the performance of disaster relief as designated in standards prescribed by the Secretary of the Treasury and any contract designated by the President as necessary to the national security. Regarding tax debt, the bill establishes that, generally, unless the tax debt is being paid timely, the delinquent status commences 90 days after an assessment. The bill also requires that any agency administering a loan or loan guarantee program or requesting proposals for contracts require each loan applicant or prospective contractor to submit a form authorizing the Secretary of the Treasury to disclose to the agency whether the loan applicant or prospective contractor has a tax debt that has been outstanding for more than 90 days.

³Section 6672 deals with TFRPs.

Delinquent Taxpayers Have Benefited From Federal Contracts and Loans

Our work at IRS over the past several years has shown that some taxpayers have benefited from federal loan and guarantee programs and have received federal contracts while they still had delinquent tax liabilities. In a disturbing number of instances, individuals have repeatedly failed to fulfill their tax obligations, starting up numerous businesses and then failing to pay their tax liabilities. In some cases, such individuals were actually assisted in this practice by obtaining federal loans or contracts. The barring provisions of the proposed bill would preclude individuals or businesses with all forms of delinquent tax debt from obtaining federal loans or contracts. H.R. 4181 would also attempt to preclude individuals responsible for the nonpayment of taxes owed by one business or partnership from obtaining federal loans or contracts for a second business or partnership.

As discussed in our report on unpaid payroll taxes,⁴ according to IRS records, over 1.8 million businesses owed cumulative delinquent unpaid payroll taxes of about \$49 billion as of September 30, 1998. Nearly 50 percent of these businesses were delinquent for more than one tax period.⁵ These businesses are typically in wage-based industries and are usually small, closely held businesses using a corporate structure, although this may vary. TFRPs totaling about \$15 billion were assessed against 185,000 individuals associated with these businesses. Our work showed that nearly 25,000, or about 13 percent of these individuals with penalty assessments, had been assessed such penalties for more than one business. About one quarter of these individuals were responsible for the nonpayment of payroll taxes at three or more businesses. The majority of these unpaid payroll taxes and associated TFRPs are not likely to be collected for various reasons, including the delinquent taxpayers' inability or unwillingness to pay.

We also found that, over a 3-month period, an estimated 16,700 civilian contractors who owed the federal government \$507 million in delinquent payroll taxes received about \$7 billion in federal payments.⁶ Additionally, as of September 30, 1998, about 12,700 taxpayers (businesses and individuals), with delinquent payroll taxes totaling about \$295 million, had

⁴Unpaid Payroll Taxes: Billions in Delinquent Taxes and Penalty Assessments Are Owed (GAO/AIMD/GGD-99-211, Aug. 2, 1999).

⁵For payroll taxes, the tax period is a quarter.

⁶There were several limitations related to this analysis. Owing to the sporadic nature of contract payments, we did not attempt to estimate an annual amount. These estimates are subject to estimation error and are based on unaudited data. In addition, serious deficiencies in IRS' financial management systems, such as the failure to timely post assessments, could cause an underestimation. Further, we did not include military contractors in our population of delinquent taxpayers.

received Small Business Administration (SBA) loan disbursements totaling about \$3.5 billion.⁷ Further analysis indicated that over 1,700 of these taxpayers received their SBA loans estimated at nearly \$449 million after they had accumulated unpaid payroll tax delinquencies of almost \$32 million.⁸

The general barring provisions are intended to end the contract award and lending practices that lead to delinquent taxpayers benefiting from federal business and programs. Other provisions of the bill seek to end the practice by some multiple tax offenders, who as corporate officers, employees, or partners, were assessed TFRPs, from using federal loans and contracts to start new businesses while the payroll taxes of other companies they were or are associated with remain unpaid. To the extent that any of the nearly 25,000 multiple tax offenders discussed earlier engage in this practice, the barring provisions of H.R. 4181 would attempt to preclude these individuals or their businesses, or any successor business or partnership that these individuals may be associated with, from obtaining additional federal contracts or loans.

Perhaps most importantly, the provisions of the proposed bill could serve as an incentive to individuals and businesses wishing to do business with the federal government to comply with their tax obligations, thus reducing the level of tax delinquencies and promoting compliance. This, in turn, would serve to provide fairness to compliant taxpayers who consistently fulfill their tax obligations, only to see a portion of their tax payments being used to finance federal loans and contracts to those who do not pay their fair share.

H.R. 4181 Poses Several Implementation Issues

In considering this legislation, Congress should be aware of IRS' current inability to consistently provide federal agencies with timely, accurate, and complete information on loan assistance applicants' and prospective contractors' delinquency status. Congress may want to defer full implementation of H.R. 4181's barring requirements until there is assurance that IRS could make effective and efficient delinquency status checks.

⁷For purposes of this study, we only looked at delinquent taxpayers receiving SBA loans. We did not broaden our work to search for delinquent taxpayers who received loans or guarantees through other federal lending programs.

⁸The attachment to our statement contains two examples from our detailed review of unpaid payroll tax case files of individuals and businesses that received some form of federal payment when they had multiple tax periods of unpaid payroll taxes.

IRS Does Not Have the Capability to Provide Accurate and Timely Delinquency Checks

H.R. 4181 would require a system that provides accurate and complete information on loan assistance applicants' and prospective contractors' delinquency status on an almost instantaneous basis. IRS could potentially be required to annually verify the tax delinquency status of over one million loan assistance applicants and prospective contractors. However, as we reported in 1999 and again earlier this year,⁹ IRS' systems are not currently capable of accessing and providing a complete and accurate status of a given taxpayer's account on a real-time basis. The lack of an automatic link or interface between IRS' business and individual master files prevents IRS from having a complete record of related taxpayer accounts to ensure that all activity, such as collections, are properly recorded in all related accounts. Without this information, IRS has no assurance that its records for an individual taxpayer or business are complete and accurate, and IRS would have to thoroughly analyze its records for a given taxpayer before ensuring that the account status is accurate. In our prior work, we found that IRS' system deficiencies have resulted in instances in which IRS has pursued and collected amounts that were no longer owed.

While IRS has made some progress in attempting to compensate for the lack of an automated interface between the two taxpayer databases, these efforts to date have not been fully effective in ensuring the accuracy of taxpayers' accounts. Until adequate automated systems are in place, it is not possible for IRS to ensure that only delinquent taxpayers that do not meet H.R. 4181 exemption provisions are barred from receiving a federal contract or loan assistance.

IRS recognizes that the age and complexity of its tape-based master file system, which holds critical taxpayer information, causes delays and inaccuracies in providing service to taxpayers. As a result, IRS is undergoing a major systems modernization effort to correct systems deficiencies. As part of this effort, it has a Customer Account Data Engine project to incrementally replace its old systems with new technology, new applications, and new databases.

According to IRS, the new system will allow employees to post transactions and update taxpayer account and return data from their desks. The updates are to be immediately available and provide a complete, timely, and accurate account of the taxpayer's information. The database and applications developed by the data engine project are to

⁹GAO/AIMD/GGD-99-211, Aug. 2, 1999, and Financial Audit: IRS' Fiscal Year 1999 Financial Statement (GAO/AIMD-00-76, Feb. 29, 2000).

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enable the development of mission-critical modernization systems. IRS expects that these new systems will provide it with the capability to service taxpayers in a manner similar to that provided by commercial-sector financial service organizations. IRS expects to fully deploy the Customer Account Data Engine for individual taxpayers in 2005. Such a system for business taxpayers will not be available until after 2005.

The Customer Account Data Engine could allow IRS to have an effective and efficient tax delinquency status check system that should be able to provide federal agencies with immediate responses from IRS on a loan assistance applicant's or prospective contractor's tax delinquency status. In developing a tax delinquency status check system, IRS could use as a model the National Instant Criminal Background Check System used to make presale background checks for purchases from federal firearms licensees—about 72 percent of the criminal background checks result in approved responses within 30 seconds, while responses to most of the remaining 28 percent are provided within 2 hours or less.

Loan Assistance Agencies Are Currently Directed to Check Applicants For Delinquent Taxes

Agencies that administer loan, loan insurance, and loan guarantee programs are currently directed to determine whether an applicant has any type of delinquent federal debt, including a tax debt. Since 1993, OMB has directed agencies administering federal loan assistance programs to include on loan application forms a question asking applicants if they have a delinquent federal debt, including a tax debt, for the purpose of determining creditworthiness. Under OMB Circular A-129,¹⁰ the agencies are to seek third-party assistance in determining whether applicants have federal debts and suspend processing applications when applicants have outstanding federal delinquencies. Processing may continue only after the debtor satisfactorily resolves the delinquency (e.g., pays in full or negotiates a repayment agreement). Similar to the Debt Collection Improvement Act of 1996, which codified OMB's bar on persons with nontax federal debts from receiving federal loan assistance, H.R. 4181 would codify the OMB guidance to bar persons with tax debts from receiving federal loan assistance.

Currently, under Internal Revenue Code section 6103(l)(3) an agency can contact IRS for information on an applicant's tax status to determine creditworthiness. We do not know how many federal loan assistance agencies contact IRS for this information, and when they do, whether they receive timely data that are accurate and complete. However, based on our prior unpaid payroll tax work, there are indications that agencies do not go

¹⁰ OMB Circular No. A-129, "Policies for Federal Credit Programs and Non-Tax Receivables."

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to IRS for delinquency information. For example, as we discussed earlier, over 1,700 taxpayers received SBA loans when they had payroll tax delinquencies.

Since agencies administering federal loan assistance programs already are directed to seek third-party assistance in determining whether an applicant has a federal debt, they should have time built into their application processes to make these determinations. Even so, before fully implementing the requirements of H.R. 4181, it would be prudent to conduct a pilot test of one or more loan assistance programs to determine whether IRS' current systems could effectively and efficiently handle the volume of delinquent requests that could be expected and what changes to its current processes and systems IRS would have to make. A pilot test would also be useful to IRS as it develops its new data systems to determine what capabilities would have to be incorporated in the new systems to handle the H.R. 4181 requirements.

H.R. 4181 Could Increase Federal Acquisition Cost

Unlike its guidance for federal loan assistance programs, OMB does not direct federal agencies to check on the tax delinquency status of prospective contractors. Thus, H.R. 4181 could affect the federal acquisition process and impose an administrative burden on agencies and on those wishing to do business with the government. We believe that efforts to address delinquent federal debt must be cost-effective. In this regard, the provision in the bill that would bar the award of federal contracts to those with delinquent federal debts might not meet this test. In recent years, both Congress and the administration have attempted to streamline the government procurement system in an effort to reduce the cost of the system for both the government and its contractors. In large part, these efforts have involved eliminating administrative requirements not central to the fundamental purpose of the procurement system: purchasing best-value goods and services in an efficient, cost-effective manner.

We do not know the extent of all of the costs, in terms of time and resources, that H.R. 4181 requirements may impose on the acquisition process and prospective customers. However, with regard to costs associated with the time it takes to award contracts, these could be reduced if IRS' modernization efforts result in a system that would give contracting agencies an almost immediate response to their requests for information on the delinquency status of prospective contractors. Since federal agencies are not currently required to deny awards based on prospective contractors' tax debts, the appropriate time to impose H.R.

4181 requirements on the acquisition process may be after IRS has the capability to effectively and efficiently check tax delinquencies.

In the meantime, beginning in July 2000, federal civilian contractors who have tax debts are to be subject to a program under which IRS can levy a portion of their contract payments. Provisions in the Taxpayer Relief Act of 1997 gave IRS authority to levy up to 15 percent of certain federal payments made to delinquent taxpayers. The payments include federal civilian agency vendor payments, Social Security benefits, and federal salary and retirement payments. When this continuous levy program is operational, IRS will be able to electronically serve tax levies on vendor payments made through the Department of the Treasury's Financial Management Service (FMS). Federal loan assistance payments are not subject to this levy program.

While the levy program will not prevent delinquent contractors from receiving federal contracts, it may allow IRS to collect delinquent taxes from some of the contractors who owe them. Our review of the continuous levy program showed that of 761,000 taxpayers that received federal vendor payments in the first quarter of 1999, about one percent, or 7,600 vendors, had delinquent taxes that would have been subject to the continuous levy program if it were operational.¹¹ The 7,600 vendors had \$362 million in delinquent taxes and received federal vendor payments totaling about \$2 billion. We estimated that about \$104 million of the vendor payments could be levied annually.

The 90-Day Barring Requirement May Be Too Restrictive

Generally, with the exception of taxpayers that have entered into agreements with IRS to pay off their tax debts, H.R. 4181 would deny loans or contracts to all taxpayers that have a tax debt more than 90 days after the date the tax was assessed. The 90-day barring requirement may prevent taxpayers that are still attempting to reach agreement with IRS regarding their tax debts from receiving federal loans or contracts.

IRS has for years had a graduated collection process that generally consisted of, first, sending delinquent taxpayers a series of notices over a period of 11 to 21 weeks before attempting personal contact through telephone calls or in-person visits.¹² If after these personal contacts IRS

¹¹Tax Administration: IRS' Levy of Federal Payments Could Generate Millions of Dollars (GAO/GGD-00-65, Apr. 7, 2000). Delinquent vendors not subject to the continuous levy program include those who were paying off their tax debts or who IRS has determined do not currently have the financial resources to pay down their tax debts.

¹²After a tax assessment is posted to IRS records and the tax has not been paid, IRS sends taxpayers a series of balance-due notices. The first notice is to be sent within a week or so after the tax assessment

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cannot settle the delinquent account, it can initiate enforced collection actions to collect the delinquent tax, such as by levying taxpayers' bank accounts or seizing their assets.

The IRS Restructuring and Reform Act of 1998 provided taxpayers with additional rights and protections before IRS could take enforced collection action, which further lengthened the collection process. The Restructuring Act required IRS to provide taxpayers with additional notifications of its intent to take enforced collection actions and expanded taxpayer rights to appeal such decisions. For example, the Restructuring Act required that IRS give the taxpayer written notice within 5 business days after filing a lien and an additional 30 days before initiating a levy or seizure action.

The 90-day timeframe for deeming a tax debt delinquent could coincide with certain collection tools IRS currently uses to seek compliance. For example, many delinquent taxpayers apply for offers-in-compromise¹³ to settle their tax debt. These applications are usually made later than 90 days from the date the tax was assessed. Even if an application were made within the 90-day period, H.R. 4181 would bar the individual from receiving a loan or contract because of the time it takes IRS to process offer applications. IRS' own performance measure for processing offers is the percent of offers closed within 6 months of the date the offer application is accepted for investigation. For fiscal year 1999, IRS met this goal for only 51 percent of its cases.

One way to help ensure that taxpayers are not barred from receiving federal contracts or loans while they are negotiating a payment agreement would be to require the Secretary of the Treasury to prescribe additional standards for IRS to use in determining whether a person has an outstanding tax debt that would be subject to H.R. 4181's barring requirements. A similar approach was taken in the Debt Collection Improvement Act of 1996 in regards to nontax federal debts. This act required the Secretary of the Treasury to prescribe standards under which agencies would determine whether a person had an outstanding delinquent debt that would trigger the Debt Collection Improvement Act's bar on federal loan assistance.

is posted. For individual taxpayers, IRS can send up to three additional notices at 5-week intervals. About 6 weeks after the fourth notice is sent, IRS attempts to make personal contact with taxpayers. The notice process is shorter for businesses. Five weeks after the initial notice, IRS is to send a second notice and wait 6 weeks after this notice before attempting personal contact.

¹³ An offer-in-compromise is a taxpayer proposal to settle a tax debt for less than the amount owed.

Conclusions and Recommendations

We support the concept of barring delinquent taxpayers from receiving federal contracts, loans, and loan guarantees and insurance. Our work has shown that some delinquent taxpayers receive billions of dollars in federal contract payments, loans, and other federal benefits. H.R. 4181 would prevent most of these delinquent taxpayers from receiving additional loans, loan guarantees, loan insurance, or contracts until they pay off their delinquent tax debts or enter into agreements with IRS to pay off their tax debts. This bill would provide a measure of fairness to the vast majority of taxpayers who consistently fulfill their tax obligations, only to see a portion of their tax payments being used to finance federal loans and contracts to those who do not pay their fair share.

However, as we have explained, this bill presents several significant implementation issues. As we have reported for years, IRS' systems are unable to provide timely and accurate data on taxpayer accounts. For this reason and because the impact on IRS' systems of the potentially large volume of requests for delinquency status information is unknown, we recommend that Congress provide that the H.R. 4181 requirements be implemented initially on a pilot basis for loans, loan guarantees, and loan insurance. With respect to federal contracts, we recommend that Congress defer the application of the barring provisions of H.R. 4181 until the results of the pilot program for loan assistance and the success of IRS' systems modernization are known. We believe that application of the H.R. 4181 barring requirement to the federal acquisition process at this time could unduly delay the procurement of needed goods and services to the federal government and increase the cost of the federal acquisition process. We could support the application of H.R. 4181 to the federal acquisition process only after IRS is able to determine in a matter of hours whether prospective federal contractors have delinquent tax debt.

The 90-day provision in H.R. 4181 for determining when a tax debt meets the barring requirement may be too restrictive because it may not allow enough time for delinquent taxpayers to fully exercise their due process rights for collection actions or to negotiate payment agreements with IRS to settle their tax debts. To help ensure that taxpayers are not prematurely barred from receiving federal contracts or loan assistance, we recommend that Congress require the Secretary of the Treasury to prescribe additional standards for IRS to use in determining when a taxpayer has an outstanding tax debt in delinquent status for purposes of barring under H.R. 4181.

Mr. Chairman, this concludes my statement. We welcome any questions that you may have.

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**Contact and
Acknowledgements**

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Examples of Unpaid Payroll Tax Delinquency Cases

The issues pertaining to individuals and businesses with multiple tax periods of unpaid payroll taxes receiving federal loans and contracts can be illustrated by two specific examples from our detailed review of unpaid payroll tax case files. It is important to note that these are just two of numerous examples of such occurrences we have observed in our work at IRS over the past several years. In each of these cases, the IRS files provided evidence of the businesses or individuals responsible for delinquent federal taxes having diverted monies for senior management's benefit or received federal payments (e.g., loans, contracts) or a combination of the two. In the first case, HR 4181 would attempt to preclude individuals who form new companies and were responsible for the nonpayment of payroll taxes from getting federal loans or guarantees, or from getting federal contracts. In the second case, if the company had applied for its SBA loan subsequent to becoming delinquent on its first quarter of payroll taxes, the provisions of HR 4181 would have prevented this business from obtaining the SBA loan.

Case 1

The first case involved a company that operated as a freight handler and had agreements with the U.S. Navy and other federal agencies. In fact, in 1993, federal government agreements accounted for 85 percent of the company's revenues, and in 1994, accounted for 65 percent of company revenues. In early 1995, an accounting firm retained by the company's officers reported an estimated \$2 million unpaid payroll tax liability and related tax returns (form 941s) that had not been filed with the IRS for the last two quarters. Officers of the company initially interviewed by IRS claimed to have no idea why funds associated with the payroll tax liabilities had not been remitted to IRS and accused the former controller of being responsible. However, IRS determined that the former controller did not have the ability to exercise control over financial matters, did not have check-signing authority, and was not a corporate officer.

Further investigation by IRS revealed that corporate funds were routinely funneled to another company owned by one of the officers and, in turn, used to acquire trucks, equipment, and an expansion of terminal locations on the East Coast. The company's corporate tax return for 1994 showed that, during the period in which the company's payroll taxes went unpaid, over \$2 million was advanced to the affiliated company. At the same time, the company's bank account balances showed that there were adequate funds to meet the payroll tax obligations. IRS determined that the primary corporate officer who owned the affiliated company had full signature authority, directed the payment of all bills, and retained authority over all financial matters.

Ultimately, IRS determined that funds for unpaid payroll taxes were also being used for corporate officers' personal expenses, including:

- Paying the estimated taxes of corporate officers,
- Installing and maintaining a swimming pool for the primary officer,
- Paying off a personal car loan for the primary officer's wife,
- Purchasing a tractor for home use, and
- Storing and maintaining at least eight antique cars owned by the primary officer.

The company eventually filed for bankruptcy. Additionally, IRS has determined that the payroll taxes of the primary officer's other company have also not been paid, and at the time we completed our work, there was a substantial tax delinquency for this company.

Case 2

The second case involved a garment manufacturing company, with outstanding federal loans and delinquent payroll taxes at the time of our review, which has since gone out of business. The company began experiencing cash flow problems almost from its inception in 1980, and it had delinquent payroll taxes for six quarters between 1981 and its last year of operation, 1988. At the time it went bankrupt, the business had an outstanding SBA loan. No trust fund recovery penalties had been assessed against the company's officers, despite evidence that the company president (who also served as vice president and treasurer) used funds to pay other creditors in an attempt to keep the business from folding. The president, while not assessed a penalty for the delinquent payroll taxes associated with this business, had been assessed penalties for delinquent payroll taxes for two other businesses in which he was involved.

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