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NYC Electrical Contractor
IRS Levies and Trust Fund Liabilities

This case study examines the successful resolution of an extreme financial crisis faced by an established New York City electrical contracting firm. Burdened by Form 941 trust fund recovery penalties and employment tax liabilities totaling over $700,000, the company faced immediate corporate dissolution following the sudden Chapter 11 bankruptcy filings of two major general contractors, which trapped over $900,000 in unrecoverable receivables for completed work.

Compounding the cash flow catastrophe, the Internal Revenue Service (IRS) issued aggressive levies, freezing the company's operational payroll account and refusing release under allegations of comingling. Furthermore, the contractor's inability to secure a compliant installment agreement threatened immediate debarment from lucrative municipal contracts under New York City procurement rules.

Retaining David Selig proved to be the turning point. Exhibiting trademark calm, methodical authority, and unwavering accessibility, Selig negotiated immediate partial levy releases to fund critical payroll, union dues, and employee health benefits, ultimately structuring an affordable, long-term installment agreement that preserved the business and restored its standing with New York City contracting agencies.

The Anatomy of a Crisis

Operating across the five boroughs, the union electrical contractor prided itself on decades of reliable commercial and residential wiring. However, the construction industry's precarious payment chain left the firm exposed to severe downstream credit risks.

When two major general contractors on high-value commercial projects filed for Chapter 11 bankruptcy within a compressed six-month window, over $900,000 in unpaid receivables for completed work was abruptly frozen. To keep crews operating, meet material invoices, and sustain weekly payroll, the contractor utilized incoming capital from subsequent jobs to cover legacy obligations—a dangerous, reactive maneuver that triggered intense IRS scrutiny of trust fund taxes (Form 941).

The Internal Revenue Code and Trust Fund Liabilities

Under I.R.C. § 3101 and I.R.C. § 3402, employers are required to withhold federal income taxes and Federal Insurance Contributions Act (FICA) taxes from employees' wages. These withheld monies are designated as trust fund taxes under I.R.C. § 7501, held in trust for the United States.

When a business experiences severe financial distress, business owners frequently commit the fatal error of utilizing withheld payroll taxes as operating capital to appease trade creditors or keep doors open. The IRS views this as an egregious breach of fiduciary duty. Under I.R.C. § 6672, the government can assess the Trust Fund Recovery Penalty against any responsible person who willfully fails to collect, account for, and pay over trust fund taxes, holding them personally liable for 100 percent of the withheld tax component.

The IRS Levy and the Comingling Obstacle

As Form 941 arrears mounted, Automated Collection System notices escalated into field enforcement. A Revenue Officer was assigned and initiated aggressive collection actions pursuant to I.R.C. § 6331, which authorizes the levy upon all property and rights to property belonging to a taxpayer upon ten days’ notice if the taxpayer neglects or refuses to pay.

The IRS issued a Notice of Levy directly to the contractor's primary commercial bank, freezing the operational account utilized for both incoming project draws and payroll disbursements.

The Comingling Obstacle

The Revenue Officer refused the contractor's initial requests for a levy release under I.R.C. § 6343(a)(1)(D) (economic hardship), pointing to evidence of fund comingling. According to the IRS, the contractor had deposited payroll withholdings alongside general business receipts and subsequently transferred funds indiscriminately.

Under the I.R.M. (specifically I.R.M. § 5.11.1 and I.R.M. § 5.17.6 regarding Collection Litigation and Trust Fund Compliance), comingling creates a rebuttable

presumption of willful failure and severely impairs a taxpayer's standing for discretionary relief. The Revenue Officer maintained that releasing the levy would merely perpetuate noncompliance, leaving the government's trust fund interests unprotected.

With payroll due in 48 hours, union contributions unpaid, and health insurance premiums lapsing, the business stood on the brink of immediate liquidation.

Enter Selig: Calm, Effective, and Accessible

Referred by corporate counsel, the contractor retained David Selig. From the initial consultation, Selig established a stark contrast to the frantic atmosphere surrounding the firm.

Operating with trademark calm and deliberateness, Selig immediately stabilized the client. Recognizing that acute crises require round-the-clock responsiveness, Selig made himself directly accessible via phone and text messaging, reassuring anxious principals while systematically dismantling the IRS's enforcement posture.

Immediate Triage: Emergency Levy Release

Selig recognized that under I.R.C. § 6343(a)(1)(C) and I.R.M. § 5.11.2.2, the IRS must release a levy if the release will facilitate the collection of the tax liability or is in the best interest of both the taxpayer and the government. His intervention unfolded through structured steps:

1. **Reconciliation and Segregation**: Selig immediately directed the controller to segregate all post-levy receivables into a dedicated, clean debtor-in-possession style holding account, neutralizing the comingling argument for newly generated revenue.

2. **Economic Hardship Defense**: Invoking I.R.C. § 6343(a)(1)(D) alongside detailed financial statements, Selig demonstrated that maintaining the levy on the existing payroll account directly prevented the business from generating the very revenue required to satisfy the tax debt.

3. **Union and Benefit Prioritization**: Selig negotiated directly with the IRS Group Manager, emphasizing that freezing funds earmarked for union dues and employee health insurance violated public policy and jeopardized collective bargaining agreements.

Through persuasive advocacy and strict adherence to I.R.M. § 5.14 (Installment Agreements) guidelines, Selig successfully secured partial levy releases. These targeted releases unlocked precisely enough capital to satisfy immediate payroll obligations, remit mandatory union dues, and keep employee health insurance policies active without a single day of operational downtime.

Municipal Contracting and Installment Resolution

With immediate liquidation averted, Selig turned his attention to the contractor's long-term viability. The firm relied heavily on New York City public works contracts—electrical installations for public schools, transit hubs, and municipal infrastructure.

The NYC Procurement Mandate

Under New York City Procurement Policy Board Rules (9 New York City Rules of the City of New York § 208) and the New York City Administrative Code (§ 6-116.1) regarding vendor responsibility, contractors bidding on municipal projects must maintain a clean tax compliance record. Specifically, vendors must demonstrate active compliance with federal, state, and local tax obligations.

Crucially, holding an active, unfulfilled tax balance bars a vendor from receiving contract registrations unless they are party to a bona fide installment agreement under I.R.C. § 6159 that is in good standing and fully compliant. Without a formal, accepted installment agreement, the city's Vendex and PASSPort systems flag the contractor, resulting in immediate disqualification from bid awards and renewal freezes on existing municipal projects.

Structuring the Installment Agreement

Selig negotiated a comprehensive resolution under I.R.C. § 6159 and I.R.M. § 5.14.2 (Streamlined and Regular Installment Agreements):

1. **Financial Analysis**: Selig prepared a comprehensive Collection Information Statement (Form 433-A and Form 433-B), accurately reflecting allowable living and operating expenses under IRS standards while accounting for the ongoing cash flow strains caused by the general contractor bankruptcies.

2. **Affordable Terms**: Rather than an aggressive monthly payment schedule that would trigger a default, Selig negotiated an achievable, tiered monthly installment agreement that scaled with the contractor's projected cash flow recovery.

3. **Tax Compliance Rider**: The agreement incorporated strict forward-compliance covenants under I.R.C. § 6159(c), ensuring future Form 941 deposits were made timely while amortizing the historical arrears.

Upon formal acceptance and processing by the IRS, Selig immediately secured the requisite Certificate of Tax Compliance, presenting it to New York City procurement officials and instantly restoring the contractor's vendor responsibility standing.

Summary of Resolution Phases

The case of the NYC electrical contractor illustrates the devastating impact of downstream bankruptcies on employment tax compliance, as well as the critical importance of specialized legal representation when facing aggressive IRS enforcement.

Phase 1: Crisis

- **Challenge**: Over $900,000 in bad debt from two general contractor bankruptcies resulting in Form 941 arrears exceeding $700,000.

- **Legal Mechanism and Citation**: I.R.C. §§ 3101, 3402, and 7501 regarding Trust Fund Rules.

- **Selig's Intervention**: Stabilized cash flow and audited historical ledger entries.

Phase 2: Enforcement

- **Challenge**: IRS payroll levy and comingling allegations freezing operational accounts.

- **Legal Mechanism and Citation**: I.R.C. § 6331; I.R.M. §§ 5.11.1 and 5.17.6.

- **Selig's Intervention**: Established segregated accounts and proved economic hardship.

Phase 3: Relief

- **Challenge**: Imminent payroll, union, and health insurance defaults.

- **Legal Mechanism and Citation**: I.R.C. § 6343(a)(1)(C) and (D); I.R.M. § 5.11.2.2.

- **Selig's Intervention**: Secured partial levy releases for payroll and employee benefits.

Phase 4: Compliance

- **Challenge**: NYC municipal contract debarment risk via Vendex and PASSPort systems.

- **Legal Mechanism and Citation**: 9 New York City Rules of the City of New York § 208 and New York City Administrative Code § 6-116.1.

- **Selig's Intervention**: Structured a compliant, affordable installment agreement under I.R.C. § 6159.

By combining a technical mastery of the I.R.C. and the I.R.M. with his calm, reassuring demeanor and accessibility, Selig transformed an existential corporate crisis into a manageable, structured recovery. The contractor retained its workforce, preserved its union relationships, and successfully resumed bidding on vital municipal infrastructure projects across New York City.