

Gray Reed Partner Obtains Acquittal in Payroll Tax Case

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Gray Reed Tax Partner [Tom Rhodus](#) recently teamed up with prominent Dallas criminal defense lawyer Chris Lewis to obtain an acquittal on all charges of an indictment charging their client with willfully failing to collect and pay more than \$700,000 in payroll taxes for 2010 and 2011, in violation of section 7202 of the Internal Revenue Code.

During the three day trial, prosecutors put on evidence showing that the defendant, a certified public accountant, filed quarterly employment tax returns that showed his awareness of his legal obligation to withhold and pay over money withheld from employees' pay and constituted an admission that such withheld taxes were not paid over. According to the government's theory, nothing more is necessary to establish the alleged crimes.

The defense team did not dispute the defendant's failure to pay the taxes but argued that the case had to be viewed in the context of then-current events, including the financial crisis that became known as the Great Recession and abnormally heavy winter storms that had a devastating effect on the defendant's businesses which included more than 80 Dairy Queen restaurants. The defense team also argued that the defendant was working with the IRS to settle his debt even after the agency levied his companies' bank accounts and that the IRS undermined his efforts to meet his tax obligations by refusing to release tax liens on the Dairy Queen stores he planned to sell in order to pay the tax deficiencies.

The jury in Lubbock, Texas, deliberated for more than 10 hours on Sept. 29, 2017, before acquitting the defendant of all 12 counts of willfully failing to pay over payroll taxes. Each count carried a potential punishment of up to five years in prison.

Prosecutions for failing to collect and pay over payroll taxes are historically very rare but are increasing in recent years. Statistics indicate that acquittals in section 7202 cases are extremely rare. According to the chart below from the Internal Revenue Service Criminal Investigations Division covering the period 2014-2016, 236 cases were indicted and 237 were sentenced (Since actions on a specific investigation may cross fiscal years, the data shown in cases initiated may not always represent the same universe of cases shown in other actions within the same fiscal year.)

How to Interpret Criminal Investigation Data

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	FY 2016	FY 2015	FY 2014
Investigations Initiated	137	102	120
Prosecution Recommendations	77	80	92
Indictments/Informations	71	87	78
Sentenced	87	62	88
Incarceration Rate*	70.1%	77.4%	73.9%
Average Months to Serve	14	24	17

*Incarceration includes confinement to federal prison, halfway house, home detention, or some combination thereof.
Data Source: Criminal Investigation Management Information System

Source: <https://www.irs.gov/compliance/criminal-investigation/statistical-data-employment-tax-evasion>