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Mar. 02, 2013

A Bel Air, Maryland, company that handled payrolls for many employers in the area is being sued by clients for allegedly stealing years of tax payments rather than sending them on to the tax collectors as required — leaving the companies on the hook.

Plaintiffs include DuClaw Brewing Co. and Animal Emergency Hospital, both of Harford County, which are each claiming losses of tens of thousands of dollars in separate lawsuits against payroll firm AccuPay. Stuart Levine, a Towson attorney who represents other businesses that used AccuPay, said he believes the payroll company had as many as 600 clients, most of them in Harford.

“Every one of them is at risk,” Levine said.

The Bel Air Police Department said Friday that it is investigating “suspected criminal activity” at AccuPay after receiving “numerous” complaints about unpaid federal income tax withholdings. Police urged AccuPay clients to call the Internal Revenue Service to determine if their taxes had been paid.

Bel Air police blocked access to AccuPay’s Churchville Road office on Friday while investigators went through boxes of paperwork. Yellow police tape was strung across the property, a converted home.

AccuPay officials, including Kieran and Beverly Carden, could not be reached for comment. The company’s phones were answered Friday first by voice mail and later not at all. A notice on the front door Thursday said only, “Payrolls were mailed or are in the back mailbox. Thank you.”

George S. Robinson IV, DuClaw's attorney, said AccuPay handled taxes for many local

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" Heidelmaier said.

Dennis Brager, a California tax lawyer and former trial attorney for the IRS, said it's not an unusual problem for payroll taxes to go unsent without the employer's knowledge. Sometimes the fault lies with a payroll services firm, sometimes with an employee. The problem for employers, he said, is that the taxes must be paid — again.

And while the IRS might forgo penalties, it probably won't waive interest payments, he said.

"The employer's ultimately responsible for making sure those taxes get paid," said Brager, of Brager Tax Law Group. "While all this is going on, it's not unusual for the IRS to file a tax lien, which will impact the business' credit rating and could cause the bank to pull the credit line. I mean, it's just a nightmare."

DuClaw's lawsuit was filed last summer in Harford County Circuit Court. The company alleged that AccuPay took more than \$306,000 in tax payments over multiple years that it failed to pass on to the IRS and the state, paying only after the brewing company discovered the problem last year — and leaving DuClaw with the accrued penalties and interest.

In its complaint, DuClaw asked for about \$58,000 in compensation for losses from the "vile fraud," plus punitive damages. The company accused AccuPay of perpetrating a Ponzi scheme in which clients' taxes were diverted for personal uses and to cover the payroll taxes of other client companies.

"This deliberate and systematic fraudulent scheme of robbing Peter to pay Paul was tantamount to a game of musical chairs where at some point the music would stop and the AccuPay client without its payroll being covered would be liable to the IRS

and the State Comptroller's Office," DuClaw said in its suit. Now, it added, "the music

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Benfield said the payroll company owners "were driving very nice cars," including Jaguars and BMWs, and "had very nice houses."

Animal Emergency Hospital said in its suit, filed Wednesday, that AccuPay "repeatedly and regularly" failed to pay or made only partial payments of federal and state withholding and unemployment taxes over the past five years, even though the payroll firm withdrew the full amounts from the hospital's account.

Animal Emergency Hospital alleged that about \$89,000 was not passed on, and said it owes "substantial" penalties and interest. An official at the veterinary hospital declined to comment Friday; its attorney did not return telephone calls.

Shortly after the case was filed this week, Harford County Circuit Judge William O. Carr ordered AccuPay to preserve all documents and records relating to its operations.

A third suit, filed Friday by the Towson law firm of Mark Van Bavel, seeks \$30,000 in damages against AccuPay for allegedly underpaying the firm's withheld taxes. Van Bavel said in an interview Friday that the amount is a placeholder — he doesn't know how much he might be out, but he wanted to file the suit quickly "in case I have to get in line."

He said an AccuPay employee called his three-person office in tears on Thursday to alert him that the payroll firm was closing.

Levine said his clients, including two restaurants and another animal hospital, might not file lawsuits because of a low likelihood of recovering the losses. But he said he expects additional lawsuits to be filed.

He said he hopes attorneys working on behalf of AccuPay clients can coordinate their efforts to try to put the company into receivership. Like DuClaw's attorney, Levine is

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"We will work with any employer who has difficulty making the payments," said Julie Ellen Squire, assistant secretary of the labor department's unemployment insurance division.

The state can waive penalties and interest in some cases of unpaid unemployment-insurance taxes, and no-interest payment plans are available, she said.

In its suit against AccuPay, DuClaw said it had used the company for payroll services since 1995. DuClaw alleged that it received warnings of deficient or no payments from the IRS and the state in the last several years, but in each case AccuPay said the tax collectors "were at fault and that it would reconcile the account."

AccuPay did not take care of the problem, but it did change its client's address on file with tax collectors so the notices then went to the payroll company, DuClaw said in its lawsuit.

DuClaw alleged that AccuPay's Ponzi scheme fell apart because it lost clients in the recession, "making it more difficult for Defendants to cover the payroll gap."

AccuPay twice forfeited its state certification to operate in Maryland — in 1991 and 2006 — for failing to file property returns, according to Maryland Department of Assessments and Taxation records. In each case, the company was reinstated.

Its website, now offline, had earlier declared that the company delivered "peace of mind" to clients.

"If you process your own payroll, you owe it to yourself to see how AccuPay can save you time and expense, and free you from your payroll headaches," the company website said.

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~~sun, he doesn't understand how a nonpayment and underpayment problem could~~

have dragged on for years. Even if a payroll company manages to divert the delinquency notices, the IRS generally sends someone to the employer's offices if large amounts of payroll taxes aren't paid, he said.

"It's disturbing that ... that kind of liability could be sitting out there without literally a knock on the door," he said.

Such liabilities can drive a company out of business, he said — "absolutely."

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