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Bel Air payroll firm sued for allegedly keeping clients' tax payments

Company has hundreds of clients, lawyers say; ripple impact feared

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Investigators from the Bel Air Police Department were at payroll service firm Accu-pay's headquarters Friday afternoon going through boxes of papers. (Video by Allan Vought)

By **Jamie Smith Hopkins** and **Lorraine Mirabella**, The Baltimore Sun
8:12 p.m. EST, March 1, 2013

A **Bel Air** 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.

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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



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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 companies, and he's hearing from some of them. "It could have a tremendous ... economic impact on the area, depending on how large the scope is," he said.

A Bel Air competitor said Friday that it has been swamped by AccuPay clients since the company — officially or not — closed its doors this week. George Heidelmaier, president of It's PayDay, said that "there's a lot of people who are going to get hurt" by the AccuPay fallout — and business owners don't know whom to rely on now.

"One of the first questions out of people's mouths is, 'How do I know I can trust you?' " 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 has stopped."

DuClaw owner Dave Benfield said Friday that he discovered discrepancies in an internal audit, launched after one of his employees ran into an attorney working on a different case against AccuPay.

"It made me sick to my stomach," he said.

The IRS waived some but not all of the penalties and fees, he added.

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.

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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."

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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

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 worried about a ripple effect if many business are forced to essentially pay taxes twice.

Both the IRS and state tax collectors said Friday that they're legally unable to comment on individual tax matters. But the Maryland comptroller's office and the state Department of Labor, Licensing and Regulation said they were aware of the situation and urged companies to call if they believe they have tax problems.

The comptroller handles income tax withholding, while the labor agency oversees unemployment-insurance taxes.

"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."



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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.

William Securro, a retired Harford County Chamber of Commerce president, is a former client and said the allegations shocked him. He said he had no problems with the company in his 10 years at the chamber.

"I'm really sorry to hear this," he said.

Brager, the former IRS trial attorney, suggests that employers check up on their payroll services provider by getting payment records from the tax collectors. It's also a good idea to choose a firm in a financially strong position, he said.

Still, 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."

Baltimore Sun Media Group reporters Jim Kennedy and Erika Butler contributed to this article.

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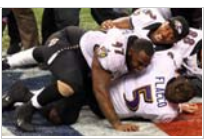
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kwa2kwa2 at 3:51 PM March 02, 2013

On another note regarding federal/state income tax preparation: Do an investigative story on the number of firms and individuals preparing taxes in the State of Maryland who offer refund loans without an installment loan license and bond. This has gone on for years, but DLLR takes a passive approach and ignores this issue.

Years ago I informed them the easiest way to ensure firms and individuals offering tax season loans is to have the few banks who offer the loans (Chase and others) verify their clients license.

Anyone who offers a refund loan in the State of Maryland is required to have an installment loan license and a bond.

Yet, there are many operators without the license and bond.

ijudgefairly at 1:09 PM March 02, 2013

One must wonder what led these victimized companies to allow the payroll company free rein with their money. Anyone handling someone else's money should be checked occasionally to assure proper operations.

ymmaynb at 8:53 AM March 02, 2013

This has nothing to do with outsourcing. If you knew how to run a business, this job take less than a day every 2 weeks. Very hard to hire a person for 1 day. So, businesses start because of the need of many businesses.

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