

▲ Dog Bites

Minnesota is one of about 35 jurisdictions that recognize strict liability for injuries caused by dogs, either by statute or common law, or both. Under Minn. Stat. §347.22, a person who owns or harbors a dog is strictly liable for any injuries caused by the dog. But a number of rulings of the Minnesota courts have limited the scope of the strict liability statute.



Late in 2007, the Court of Appeals held that a landlord is not strictly liable for injuries caused by a bite of a tenant's dog in **McLeod v. Hodgeman**, 2007 WL 4110068 (Minn. App. 2007) (unpublished). The case was one in a series of rulings over three years in which the Minnesota Court of Appeals rejected strict liability claims in dog bite cases. See **Hyatt v. Anoka Police Department**, 700 N.W.2d 502 (Minn. App. 2005) (police dog biting arrest bystander); **Burger v. Bigelow Ponderosa Mobile Home Park**, 2006 WL 163430 (Minn. App. 2006)

(mobile home park owner not liable); **Carlson v. Friday**, 694 N.W.2d 828 (Minn. App. 2005) (dog groomer not entitled to sue owner)

The disinclination to apply the strict liability law strictly, so to speak, is not unique to Minnesota. Other courts have retrenched on the application of their state strict liability laws. For instance, the Wisconsin Supreme Court has held, on "public policy" grounds that its strict liability statute did not cover a young girl who was bitten when she and her mother visited the unoccupied home of a neighbor to drop off a gift. **Fandrey v. American Family Mutual Ins. Co.**, 272 Wis.2d 46, 680 N.W.2d 345 (Wis. 2004). Courts in Nebraska, Colorado, and other states also have limited the strict liability statutes in their respective jurisdictions in recent years.

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was legally responsible to collect and pay employment taxes; he was given ample notice of his failure to pay by the IRS; and the claims were brought against him within the three-year statute of limitations. Most importantly, he and his company were paying the bills of creditors other than the IRS, when it failed to pay the withholding taxes.

The court held there is no reasonable or good-cause basis for not paying taxes. As to the question of personal liability, bad or evil intentions are not required: all that was required was that payroll was earned and payroll taxes weren't withheld and paid to the government. The president, sole owner and check signer is personally liable for the failure to pay. Pro-rating taxes in an attempt to keep the company solvent does not work.

See **Anuforo vs. Commissioner of Internal Revenue**, Civil No. 07-1756 (D. Minn. 09/30/08).

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sional, *i.e.*, one who, among other things, operates a real property trade or business. The tax statute lists qualifying businesses as follows: real property development, redevelopment, construction, reconstruction, acquisition, conversion, rental, operation, management, leasing or brokerage trade or business. The statute also says that the determination of a taxpayer's real property trades or businesses is based on all relevant facts and circumstances. And the regulations state that the work done in the business means any work performed by an individual in connection with a trade or business, but not as an investor.

The courts have not decided whether this statutory list is illustrative or exclusive, but two cases currently docketed in California likely will address this. The decided cases give as the general purpose of the statute to limit the exceptions to the passive loss rule in order to prevent persons with full-time non-real-property businesses from deducting their investment expenses from their regular income. It would seem contrary to the courts' reasoning, generally as to the statute, to exclude any actual real property professional from this beneficial treatment.

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▲ Real Estate Rental Expense

Does a real estate agent qualify as a real estate professional for the purposes of deducting rental expenses from regular income? The IRS says no. The IRS says that a real estate agent cannot qualify as a real estate professional; so many tax professionals are instructing their clients to use the passive loss rule.

In order to deduct rental real estate activity expenses against regular income you must be a real estate profes-

A company that from its inception consistently failed to pay its employment taxes attracted the attention of the IRS and, in 2000, they entered into an agreement to pay the unpaid employment taxes. However, the company's subsequent failure to pay employment taxes led the IRS to bring an action against Cyril Anuforo, the owner/operator, personally for his failure to pay the taxes. Anuforo was the person in his company who

▼ Tax Liability Trumps

Some businesses have problems with customers. Some have problems with employees. Unless your business client wants to have problems with the IRS, don't assume their tax liabilities can take a back seat to customer and employee problems.

