

Are You Personally Responsible For NYS Withholding and Sales Taxes? New York State Responsible Person Assessments

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Ordinarily, a business is responsible for paying its own taxes. However, there are circumstances when New York State is permitted to collect a business' withholding tax and sales tax from "responsible persons" of the entity. Such individuals typically try to contest the notion that they are personally liable, thus it is important to know the rules. **NYS Withholding Tax**

New York may pursue individuals to collect a business' unpaid withholding tax if that person (1) had the duty to collect the tax and (2) willfully failed to perform that duty. The unpaid tax is assessed against the individual as a penalty, and it is not dischargeable in personal bankruptcy. Responsible persons are personally liable for 100% of the unpaid withholding tax, regardless of their percentage of ownership. The unpaid withholding tax passes through to the individual as a penalty. A taxpayer can protest both the tax liability amount and the status as a responsible person even if the company does not protest.

NYS Sales and Use Tax

New York State imposes personal liability on every person required to collect sales or use taxes. Willfulness is not required. General partners of a partnership and LLC members are responsible persons except as stated below.

The business' entire tax liability

flows through to the responsible persons, including accrued interest and penalties. However, the State must act within the Statute of Limitations.

Each individual taxpayer must be assessed separately for the business' tax liabilities. However, with the assessment notice comes appeal rights through the Bureau of Conciliation and Mediation Services which allow the individual taxpayer to challenge the assessment by providing proof that he/she is not a responsible person under the law.

Often, the notices are sent to the business and the individual taxpayer(s) being held as responsible person(s), at the same time. A taxpayer can protest both the tax liability amount and the status as a responsible person even if the company does not a protest.

Relief is available for Sales Tax Responsible Person Assessments stemming from an LLC.

Individuals being assessed for the sales tax liabilities of a Limited Liability Corporation ("LLC.") are eligible for relief under the law only if: Their ownership interest and percentage share of the profits and losses of the LLC. are less than 50%, and they were not under a duty to act on behalf of the LLC. in complying with the sales tax law.

If eligible and relief is granted, the taxpayer's liability is limited to the greater of their ownership interest or percent-

age share of profits and losses in the business.

In addition to limiting their tax liability, individuals granted relief are also relieved of any penalties owed by the business.

Conclusion

Clients should be advised to address any tax notices as soon as possible to preserve all available appeal options. If a taxpayer is found to be a responsible person, they may still pursue collection alternatives such as an Offer in Compromise or Installment Agreement to settle the matter. 📞



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