

Personal Liability for Unpaid Sales, Fuel and Withholding Taxes

Utah State Tax Commission

Taxpayer Services Division

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General Information

The purpose of this publication is to advise individuals with control of the finances of a corporation, LLC, LLP, partnership, or other entity, that they may be held personally liable for that entity's failure to collect or remit certain trust fund taxes.

Trust fund taxes are monies that the entity is required to collect or withhold on behalf of the State of Utah. The following taxes are trust fund taxes:

- State and local sales and use taxes.
- Transient room and tourism taxes on motel/hotel accommodations
- Tourism tax on sales of prepared food (restaurants)
- Statewide and tourism taxes on short-term motor vehicle rentals
- Motor fuel, clean fuel, special fuel, and aviation fuel tax
- Municipal energy sales and use tax
- Withholding tax
- Mineral production withholding tax
- Waste tire recycling fee

Personal Liability

Utah Code §59-1-302 provides that if an entity that is required to collect trust fund taxes fails to collect or remit those taxes, the Tax Commission shall assess a penalty equal to 100 percent of the unpaid trust fund taxes on any responsible individual within the entity. Assessment of the penalty will result in the filing of a lien for delinquent taxes which carries the same force as a court judgment and may be executed against real and personal property of the responsible individual.

Who is Responsible

A responsible individual is one who had the duty or the power to direct the collection, accounting, or remittance of trust fund taxes to the Tax Commission at the time the delinquency occurred. A responsible individual may be:

- An officer, director, or shareholder of a corporation
- Another corporation or partnership
- A partner in a partnership
- A lender
- An employee of a corporation, partnership or proprietorship
- A court-appointed trustee
- Any other person who had significant control over the finances of a business or who determined which creditors would be paid

How to Determine Responsibility

In reaching the determination that an individual is responsible, the Tax Commission will ascertain who had the duty, responsibility and authority to do any of the following:

- Sign checks
- Hire and fire employees
- Sign tax returns
- Sign or authorize payroll
- Control corporate voting stock, either totally or partially
- Determine which creditors were paid
- Investigate or correct mismanagement
- Be aware of obvious or known risks which resulted in the failure to collect, account for or pay the tax.

What Records May Be Used

The determination of responsible individuals will be based upon research and investigation of the following:

- Tax Commission internal records, including filed returns
- Department of Commerce files, including UCC filings
- Documents prepared by the business entity
- Other legal documents
- Bank records
- Corporate meeting minutes
- Testimony of the business entity

- Testimony of witnesses
- Internal Revenue Service documents
- Employment Security information
- Other relevant information

Tax Commission Responsibility

Pursuant to its statutory obligations, the Tax Commission will make every effort to ensure that trust fund taxes are protected, responsible individuals are assessed, and amounts due are collected in the most fair, responsible, and efficient manner possible.

Items listed in this publication are examples only. Other evidence may also be considered.