

Sales and Use Tax: Corporation's Officer Personally Liable for Its Unpaid Tax

A corporation's officer was personally liable for the unpaid California sales tax owed when the corporation ceased business because the taxpayer was responsible for tax compliance during the liability period.

Under California law, (R&TC Section 6829) a corporation's officer can be held personally liable for the corporation's sales tax if:

- the corporation's business is terminated;
- the corporation collected but failed to remit sales tax;
- the officer was responsible for filing and payment of tax; and
- the officer willfully failed to pay taxes.

Facts

Western, a California corporation located in San Francisco, California, made retail sales of plywood beginning January 1, 1985. According to a Contract for Sale of Business dated July 17, 2012, Western sold its business to Woodbank, Inc. for \$331,875, including the business's inventory, furniture, fixtures, equipment, and goodwill, and Western's business operations terminated.

Issues

- Whether the corporation officer (appellant) for Western were personally liable for Western's unpaid sales tax liabilities for the liability period of October 1, 2011, through March 31, 2012 (a period of time when they owned the business).
- Whether appellant is entitled to relief of the late-filing penalties incurred by Western.
- Whether relief of interest is warranted.

Taxpayer Position

- Appellant agreed that Western sold tangible personal property in the conduct of its business, collected sales tax reimbursement on the selling price, and failed to remit such tax when due.
- Appellant agreed that he was one of the persons responsible for Western's sales and use tax compliance during the liability period.
- Appellant also agreed that he had actual knowledge of Western's unpaid tax liabilities; he had the authority to cause Western to pay them; and Western had funds available to pay the liabilities.
- However, the *appellant argued that the purchaser of the corporation's business assumed all the tax liabilities as part of the sales agreement.*

Ruling

California Department of Tax and Fee Administration (CDTFA) however, noted that the contract had no effect on statutory liability imposed on the appellant (corporation officer). Nor was financial hardship a basis for relieving the personal tax liability.¹

Impact

This case highlights several important points that all California corporations (including nonprofit religious corporations and churches) need to understand:

- Corporations can, and will, be held accountable for the unpaid taxes to the State, including sales and use tax.
- Corporations may not pass along that liability to another entity or individual.
- Individual corporate officers deemed by the State to have had fiduciary oversight of the entity's activities (often interpreted to be the corporation treasurer and/or president) can be held personally liable for the unpaid taxes of the entity.
- California is intent on collecting all unpaid sale and use tax deemed to be owed to the State.

Required Filers¹

The following businesses (religious organizations included) are required to report purchases subject to use tax directly to the California Department of Tax and Fee Administration:

- Businesses that have a California seller's permit.
- Businesses, known as Qualified Purchasers², not required to hold a California seller's permit, but receive at least \$100,000 in annual gross receipts.
- Businesses that have a California consumer use tax account.

Businesses that don't fall into one of the above categories have two options:

- Pay use tax on state income tax forms - The business can complete the worksheet included in the instructions to the income tax return form applicable to its entity to determine the amount owed
- You may pay use tax on one-time purchase on the CDTFA website.³

California's Sales Tax Audit Statute of Limitations

In general, the statute of limitations for a sales tax audit (or any tax audit) is three years, if you have filed sales tax returns. This means that the California Department of Tax and Fee Administration (CDTFA) can audit the three previous tax years. So an audit by the CDTFA conducted in 2019 can cover 2018, 2017, and 2016, but not 2015 and earlier.

However, if you have failed to file tax returns, the statute of limitations for an audit is eight years. In this case, the CDTFA can audit every year from 2018 all the way back to 2011. The reason for the increased length of time is because the failure to file regular tax returns may be indicative of tax fraud and evasion.

It should be noted that there are circumstances that can extend these two statutes of limitations. For example, if the CDTFA discovers that you have committed tax fraud or that you intended to commit tax fraud, they can audit your records for evidence of fraud beyond the three- or eight-year time periods discussed above.

¹ <https://www.cdtfa.ca.gov/taxes-and-fees/use-tax.htm#Business>

² Generally, a "Qualified Purchaser" is a business or person that receives at least \$100,000 in gross receipts from business operations per year, and is not otherwise required to be registered with the CDTFA. Qualified Purchasers are required to register with the CDTFA and report and pay use tax due on purchases made from out-of-state retailers. Please visit the Qualifications page for more information.

³ <https://onlineservices.cdtfa.ca.gov/Directory/>

Conclusion

Churches and religious organizations operating in California need to take seriously their tax obligations under the current sales and use tax regulations or risk a potential audit.

Organizations found guilty of failing to comply with the law can be expected to pay significant financial penalties that may also include late penalties and interest on the balance due. If you need assistance understanding how the law applies to your organization we recommend you seek assistance from your CPA or a qualified expert.

¹D. Woerner, California Office of Tax Appeals, No. 18012007, August 6, 2019

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