

**Text of Proposed Amendments to  
California Code of Regulations, Title 18, Section 1702.5**

**1702.5. Responsible Person Liability.**

(a) General. Any responsible person who willfully fails to pay or to cause to be paid, under circumstances set forth below, any taxes due from a corporation, partnership, limited partnership, limited liability partnership, or limited liability company pursuant to Part 1, Division 2, of the Revenue and Taxation Code shall be personally liable for any unpaid taxes and interest and penalties on those taxes not so paid upon termination, dissolution, or abandonment of the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company.

Personal liability shall only apply if the Board establishes that while the person was a responsible person, as defined in subdivision (b)(1), the corporation, partnership, limited partnership, limited liability partnership, or limited liability company:

1. sold tangible personal property in the conduct of its business and collected sales tax reimbursement on the selling price (whether separately itemized or included in the selling price) and failed to remit such tax when due; or
2. consumed tangible personal property and failed to pay the applicable tax to the seller or the Board; or
3. issued a receipt for use tax and failed to report and pay the tax.

(b) Definition of Terms.

(1) Responsible Person. As used herein, the term “responsible person” means any officer, member, manager, employee, director, shareholder, partner, or other person having control or supervision of, or who is charged with the responsibility for, the filing of returns or the payment of tax or who has a duty to act for the corporation, partnership, limited partnership, limited liability partnership, or limited liability company in complying with any provision of the Sales and Use Tax Law. The fact that a person possesses any of the aforementioned titles, in and of itself, is not sufficient to establish that the person is a “responsible person.” The term “responsible person” does not include any person who would otherwise qualify but is serving in that capacity as an unpaid volunteer for a non-profit organization.

(2) Willfully Fails to Pay or to Cause to be Paid. As used herein, the term “willfully fails to pay or to cause to be paid” means that the failure was the result of a voluntary, conscious and intentional course of action. A failure to pay or to cause to be paid may be willful even though such failure was not done with a bad purpose or evil-motive. A person has willfully failed to pay the taxes, or to cause them to be paid, only when the Board establishes all of the following:

(A) On or after the date that the taxes came due, the responsible person had actual knowledge that the taxes were due, but not being paid.

(B) The responsible person had the authority to pay the taxes or to cause them to be paid (i) on the date that the taxes came due and (ii) when the responsible person had actual knowledge as defined in (A). A responsible person who was required to obtain approval from another person prior to paying the taxes at issue and was unable to act on his or her own in making the decision to pay the taxes does not have the authority to pay the taxes or to cause them to be paid.

(C) When the responsible person had actual knowledge as defined in (A), the responsible person had the ability to pay the taxes but chose not to do so.

(3) Termination. As used herein, “termination” of the business of a corporation, partnership, limited partnership, limited liability partnership, or limited liability company includes discontinuance or cessation of all business activities for which the corporation, partnership, limited partnership, limited liability partnership, or limited liability company was required to hold a seller’s permit or certificate of registration for the collection of use tax.

(c) Collection.

(1) Once the Board has established the requirements of personal liability in subdivision (a), and further defined in subdivision (b), The Board may issue a Notice of Determination, in the manner provided in Chapter 5 of the Sales and Use Tax Law, for the amount of the personal liability of the responsible person, and penalties and interest shall be added to the amount due as applicable. The Board may collect the amounts due from the responsible person in the manner provided by Chapter 6 of the Sales and Use Tax Law for the collection of sales and use taxes.

(2) On or after January 1, 2009, a Notice of Determination shall be mailed within whichever of the following periods expires earlier:

(A) Three years after the last day of the calendar month following the quarterly period in which the Board obtains actual knowledge, through its audit or compliance activities, or by written communication by the business or its representative, of the termination, dissolution, or abandonment of the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company; or

(B) Eight years after the last day of the calendar month following the quarterly period in which the business of the corporation, partnership, limited partnership, limited liability partnership, or limited liability company was terminated, dissolved, or abandoned.

(3) If a business or its representative files a notice of termination, dissolution, or abandonment of its business with a state or local agency other than the Board, this filing shall not constitute actual knowledge by the Board under this regulation.

(d) Burden of Proof and Standard of Proof. In order for a person to be personally liable, the Board has the burden to prove that the requirements of personal liability in subdivision (a), and

further defined in subdivision (b), have been satisfied under the preponderance of the evidence standard of proof.

(e) Presumption. If the person is not an officer or a member or a partner or a manager with an ownership interest in the entity, the person is presumed to not be personally liable under subdivision (a), unless the Board rebuts this presumption with clear and convincing evidence.

Note: Authority cited: Section 7051, Revenue and Taxation Code. Reference: Section 6829, Revenue and Taxation Code.