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"responsible parties" can be personally liable for sales tax obligations. What is a responsible party and why is the ask so invasive?

Judy Vorndran • Nov. 12, 2018



Business owners, officers, directors, shareholders, and employees identified as "responsible parties" can be personally liable for sales tax obligations. What is a responsible party and why is the ask so invasive?

Clients of ours have been reluctant to give up their social security number (SSN) for purposes of sales and use tax registrations. In some cases, it takes a lot of explaining

before a CEO, CFO or officer feels comfortable giving up such personal information as

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wide range of individuals to relinquish their personal information before the business can be entrusted with SALT funds.

Without an SSN and driver's license information, an entity cannot typically submit a state registration. Without registration, uncollected taxes against a business can generate late returns, penalties and interest to contend with. Not to mention the fact that it is often considered fraudulent to collect sales taxes (or exemptions certificates for that matter) without a proper license.

Many of my clients believe they are not personally responsible for managing sales tax; the corporation or entity they work for is the responsible party. By releasing their personal information to SALT authorities, they too—in addition to the company—become a responsible party, on the hook for accurate and timely sales and use tax collection and remittance at the company level.

Several clients who signed on as responsible parties have taken extra steps, such as setting up a Lifelock account, to mitigate some of the risk associated with handing over their personal SSN to “unknown entities.” Unreasonable, yes, but often necessary.

Assuming trustee status

Many retailers fail to appreciate the middleman duty and legal obligation their business is under as trustees for sales and use taxes. Sales and use taxes do not belong to the company; the company merely acts as a trustee in collecting and remitting the proper amount of tax to SALT authorities.

When it comes to personal liability for debts of an entity, failing to collect or misappropriating sales and use tax can put your people—owners, officers, directors, shareholders, and employees—at risk. Each of these individuals may be held personally liable for the failure of a company to properly collect and remit sales and

use taxes if these individuals are considered responsible parties. This liability extends

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Individuals may be legally required to provide their SSN in transactions requiring notification to the IRS and other tax authorities in most financial transactions, employment records and tax returns.

Who is required to submit their SSN and personal information is an amorphous area. No universal parameters exist in sales and use tax transactions. Instead there are nuances state-by-state. For example:

- In Florida, online-only and brick-and-mortar businesses must register to collect sales tax. In addition to basic information, the registration form requires the owner's SSN, unless the entity is a corporation, business trust, non-business trust, estate or Indian tribe.
- Other states won't open a sales tax account without an officer and director SSN. The [Texas sales tax form](#) requires each officer or director of a corporation to provide their social security numbers. We often start at one and see if they ask for more.

Who is responsible?

A responsible party can include not only the person whose duties involve managing and paying taxes but may also include any other person who has the authority or ability to control business payments and decisions.

Although almost all states have personal liability rules, California, Georgia, Illinois, New York, South Carolina and Texas are among the states that have codified or otherwise require a responsible party to be held personally liable for uncollected or unpaid taxes of a company.

Identifying responsible parties varies from state to state:

- South Carolina has required corporate board minutes proving a person is

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Management and certain individuals are automatically considered responsible persons, including owners, general partners, LLC members, and corporate directors, officers and certain shareholders.

The takeaway

The best way to protect your business and people from personal liability for sales taxes is to:

- Pay what's due when it's due
- Ask questions before releasing your SSN and personal information to tax authorities (is SSN required?)
- Review tasks and decision-making authority, shareholder agreements, employee contracts, entity disclosures and director and officer agreements to identify responsible parties in jurisdictions
- Ensure personnel and internal controls are in place to manage and safeguard sales and use tax obligations
- Consult with your tax advisor to avoid or satisfy the tax liability in the first place

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Judy Vorndran is State & Local Tax Partner at TaxOps LLC. Judy helps clients and tax professionals navigate the morass of state and local tax issues with the goal of making it less “taxing!” She is a nationally recognized thought leader and award-winning instructor with a steady focus on finding ways to simplify complex state and local tax issues and resolve areas of state tax controversy.

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